IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 178

Magistrate's Appeal No 9259 of 2016

Between

Public Prosecutor

… *Appellant*

And

Sakthikanesh s/o Chidambaram

… *Respondent*

Magistrate's Appeal No 9260 of 2016

Between

Public Prosecutor

… *Appellant*

And

Vandana Kumar s/o Chidambaram

… *Respondent*

Magistrate's Appeal No 9312 of 2016

Between

Public Prosecutor

… *Appellant*

And

Ang Lee Thye

… *Respondent*

HC/Criminal Motion No 13 of 2017

Between

Public Prosecutor

… *Applicant*

And

1. Sakthikanesh s/o Chidambaram
2. Vandana Kumar s/o Chidambaram
3. Ang Lee Thye

… *Respondent(s)*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark sentences]

[Criminal Procedure and Sentencing] — [Appeal] — [Adducing fresh evidence]

CONTENTS

Public Prosecutor
v
Sakthikanesh s/o Chidambaram and other appeals and another matter

[2017] SGHC 178

High Court — Magistrate's Appeals No 9259, 9260 and 9312 of 2016;
Criminal Motion No 13 of 2017
Sundaresh Menon CJ, Chao Hick Tin JA and See Kee Oon J
25 April 2017

24 July 2017

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 National Service ("NS") was introduced in post-independence Singapore in 1967. The mandatory conscription of young male Singaporeans was necessary for the establishment of a credible defence force for our newly independent state. NS was also to serve a nation-building role, as it was thought that participation in national defence by individuals from all strata of society would help foster national consciousness and loyalty: *Singapore Parliamentary Debates, Official Report* (13 March 1967) vol 25 at cols 1158-1162 (Mr Goh Keng Swee (Minister for Defence)).

2 Fifty years on, NS has become the cornerstone of Singapore's defence and security. Full-time National Servicemen ("NSFs") and Operationally-

Ready National Servicemen ("ORNs") form the backbone of the Singapore Armed Forces ("SAF"). All male Singapore citizens, regardless of their background, are required by law, pursuant to the Enlistment Act (Cap 93, 2001 Rev Ed) ("the Act"), to serve when they reach the age of 18 and are called upon to do so. The vast majority of these young people have complied with the enlistment notice. However, a small minority, which we shall refer to as "NS defaulters", have not. In some cases, the NS defaulters have returned to serve their NS obligations at a later time of their choosing. In extreme cases, by the time they returned, they have reached an age where they could no longer serve their NS obligations at all.

3 MA 9259 of 2016, MA 9260 of 2016 and MA 9312 of 2016 ("MA 9259" "MA 9260" and "MA 9312") were appeals brought by the Public Prosecutor against the sentences imposed by the court below on three NS defaulters. These appeals required us to consider a number of issues relevant to the sentencing of NS defaulters. The High Court in *Public Prosecutor v Chow Chien Yow Joseph Brian* [2016] 2 SLR 335 ("*JBC*") had earlier enunciated a sentencing framework for NS defaulters. At the conclusion of the hearing on 25 April 2017, we allowed the appeals and enhanced the sentence imposed on each of the NS defaulters. In doing so, we provided brief reasons for departing from the decision in *JBC*. At the time judgment was delivered, we also indicated that full written grounds for our decision would be issued at a later date, which we now do.

Background Facts

MA 9259 and MA 9260

4 The respondents in MA 9259 and MA 9260 are brothers (collectively "the brothers"). Their father is an Indian citizen, while their mother is a

Singapore citizen. The brothers' parents have had their matrimonial home in India ever since their marriage in 1990. The mother's family is in Singapore and she had travelled here every now and then to visit them. One of the mother's sisters lives in a HDB flat, and in respect of that flat, the mother had contributed to the purchase using her CPF funds and was registered as a co-owner with that sister.

Sakthikanesh

5 Sakthikanesh was 26 years old when the present appeals were heard. He was born in Singapore at the Kandang Kerbau Hospital ("KK Hospital") on 23 March 1991. His mother had returned to Singapore to give birth to him, and mother and son left for India when he was two-and-a-half months old. Santhikanesh grew up in India and received his full education there from primary to tertiary level.

6 Sakthikanesh holds a Singapore passport, which he had renewed twice. He had used this passport to travel to Malaysia and India. Between 2000 and 2008, he made six visits to Singapore, each time staying slightly more than a month. On 5 June 2006, he applied for and obtained a Singapore National Registration Identity Card ("NRIC").

7 Sakthikanesh attained sixteen-and-a-half years of age on 23 September 2007 and was, therefore, required, pursuant to s 32(1) read with s 2 of the Act, to obtain a Valid Exit Permit ("VEP") to leave or remain outside Singapore. On 12 June 2008, when he was back in Singapore for a visit, he acknowledged receipt by hand of a NS Registration Notice issued by the Ministry of Defence ("MINDEF") informing him to register for NS. He did not do so, and instead left Singapore about two weeks later, on 29 June 2008, to pursue his university

education in India. A Further Reporting Order ("FRO") was issued to him on 29 August 2008 requiring him to report for registration, pre-enlistment documentation and medical screening on 29 September 2008, with which he also failed to comply. Sakthikanesh only returned to Singapore on 16 April 2014, after completing his university studies. The charge proceeded against him was for his failure to comply with the FRO, thereby committing an offence under s 33(*a*) of the Act between 29 September 2008 to 15 April 2014, a period of about five years and six months. Another charge under s 33(*b*) of the Act, for remaining outside Singapore without a VEP from 29 June 2008 to 15 April 2014, a period of about five years and nine months, was taken into consideration.

8 Upon his return, Sakthikanesh enlisted into NS on 11 September 2014, when he was 23 years old. He was selected for and entered the Officer Cadet School ("OCS"), and was assessed by his superiors during his Basic Military Training ("BMT") as well as at OCS as someone who was "motivated", "trustworthy", produced "above average results", and who had "gone beyond what was required of him". He was removed from the OCS barely a month before completing the course and becoming a commissioned officer, due to the proceedings for his earlier default of NS.

Vandana

9 Vandana was 23 years old when the present appeals were heard. He was born in Singapore on 2 November 1993, also at the KK Hospital. He left for India with his mother when he was one-and-a-half months old. He also grew up and received his education wholly in India.

10 Like Sakthikanesh, Vandana holds a Singapore passport, which he had renewed twice. Between 2000 and 2009, he made seven visits to Singapore from India, with each visit lasting slightly more than a month. On 23 May 2009, he applied for and obtained a Singapore NRIC.

11 Vandana attained sixteen-and-a-half years of age on 2 May 2010, and was likewise required to obtain a VEP pursuant to s 32(1) read with s 2 of the Act to leave or remain outside Singapore. On 20 May 2010, a Registration Notice informing Vandana to register for NS was sent to the family's overseas address in India, as Vandana was in India after his last visit to Singapore in 2009. A second Registration Notice was subsequently sent to him on 2 July 2010. On 6 January 2011, an FRO was issued to Vandana requiring him to report on 31 January 2011 for registration, pre-enlistment documentation and medical screening, but he failed to comply. He remained in India until his return to Singapore on 4 June 2014. The charge proceeded against him was for his failure to comply with the FRO, thereby committing an offence under s 33(*a*) of the Act between 1 February 2011 and 3 June 2014, a period of about three years and four months. Another charge under s 33(*b*) of the Act, for remaining outside Singapore without a VEP from 1 August 2010 to 3 June 2014, a period of about three years and 10 months, was taken into consideration.

12 Upon his return, Vandana enlisted into NS on 27 November 2014 when he was 21 years old. He was not selected for OCS, unlike his brother, but was selected to participate in the 2015 National Day Parade as a Gunner on display and for an overseas training exercise held in Australia. He also emerged as the best trooper in his section after attaining the top score during an Army Training Evaluation from 23 to 25 February 2016, and was named Company Soldier of the Month of May 2016. Like his brother, Vandana received good testimonials

from his superiors, praising him as "an influential leader within his platoon" who displayed "great initiative on multiple occasions", "constantly motivate[d] his peers", and always "[gave] his best during the trainings".

MA 9312

13 Ang Lee Thye ("Ang"), the respondent in MA 9312, was born in Singapore on 24 November 1973. He spent the first 14 years of his life here, where he received his primary school education and part of his secondary school education. He was a student at Fairfield Methodist Secondary School and was staying at an HDB unit at Holland Close ("the Holland Close unit") when he left Singapore in 1987 together with his mother and brother to join his father who was working in the US. His mother remains a co-owner of the Holland Close unit.

14 On 2 August 1991, when Ang was 17 years of age, MINDEF's Central Manpower Base ("CMPB") sent a Registration Notice to Ang at the Holland Close unit requiring Ang to report on 19 August 1991 for pre-enlistment registration and medical screening. Ang failed to comply. After investigations revealed that Ang had left Singapore with his family, CMPB sent another Registration Notice, this time to Ang's uncle's home at Jurong West, requiring Ang to register for NS as an overseas registrant. CMPB also highlighted the requirement for Ang to obtain a VEP to remain overseas, and the forms for the overseas registration and the application for the VEP were enclosed with the Registration Notice. Ang was to complete and return the forms to CMPB by 28 April 1991. When Ang failed to respond, CMPB on 5 December 1991 sent a reminder to Ang at the Holland Close unit, stating that an NS-liable person who failed to register would be guilty of an offence, and setting out the prevailing prescribed maximum punishment for that offence. Ang never responded.

15 It was close to 10 years later, on 5 November 2001, when Ang was 27 years of age, that he emailed CMPB stating that he had lost his passport and that his legal status in the US was in jeopardy. According to Ang, he had by then graduated from New York University with a Master's Degree in Literature. He stated in the email that he had applied for a replacement passport at the Consulate General office of Singapore in New York but was told that he needed to produce a VEP before his application could be processed. CMPB replied two days later on 7 November 2001 informing Ang that he had been classified as an NS defaulter and advising him to return to Singapore to resolve the matter as soon as possible so as not to prolong his default period. He was also informed that he could apply for a Document of Identity at the Consulate General office of Singapore in New York to facilitate his return.

16 Ang did not respond to CMPB's email of 7 November 2001. It was not until seven-and-a-half years later, on 27 July 2009, when Ang was 35 years of age, when he again emailed CMPB indicating that he "missed Singapore" and "would like to return at some point, preferably very soon"[1]. In the same email, he stated that his "chief concern" was that he would be arrested upon arrival in Singapore because he had never reported for NS duty, and asked CMPB to tell him what fines and punishments he might be liable for should he return. He stated that he was "willing to pay any reasonable fines", and asked if he would "still be subjected to serve in the Singapore military". He added that:

> At my age, I'd prefer that my abilities be serve[d] elsewhere that the Singapore government deems appropriate. I do possess a Masters degree and have extensive experience in high finance, having worked in the field for over 10 years.

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[1] ROP for MA 9312 pp 16-17.

On 5 August 2009, CMPB replied to Ang's email stating once again that he had committed offences under the Act and setting out the prescribed punishments. CMPB again advised Ang to return to Singapore as soon as possible to resolve the matter.

17 It was not until more than four years later, on 20 October 2013, about a month before Ang's 40th birthday on 24 November 2013, that he emailed CMPB again indicating that he wished to return to Singapore. Slightly more than a year later, on 9 December 2014, he emailed CMPB indicating that he would be returning to Singapore on 2 January 2015. He eventually reported to CMPB on 5 January 2015, at the age of 41, beyond the statutory age of 40 and when he could no longer fulfil any of his NS obligations.

18 Ang's period of default crossed over the day when amendments to the Enlistment Act came into effect on 8 May 2006 increasing the maximum fine prescribed under s 33 thereof from $5,000 to $10,000. The first charge proceeded against him was for his remaining outside Singapore without a VEP from 24 May 1990 (the date he turned 16.5 years of age) to 7 May 2006, an offence under s 32(1) and punishable under s 33 of the Act. The second charge proceeded against him was for his remaining outside Singapore without a VEP from 8 May 2006 to 23 November 2013 (the date he turned 40 years of age and became no longer "a person subject to [the] Act"). The two charges collectively covered a period of about 23.5 years.

The decisions below

19 The respondents in all three appeals pleaded guilty to their respective charges. In the court below, Sakthikanesh was sentenced to three weeks' imprisonment while Vandana was given a fine of $6,000. As for Ang, he was

sentenced to 24 months' imprisonment in respect of the first charge and 15 months' imprisonment in respect of the second charge. The two terms of imprisonment for Ang were ordered to run concurrently, giving him a total sentence of 24 months' imprisonment.

20 Sakthikanesh and Vandana were sentenced by the same district judge, whereas a second district judge sentenced Ang. Both district judges purported to have applied the sentencing framework laid down in *JBC*. The salient points of their grounds of decision are set out below.

For MAs 9259 and 9260

21 The district judge noted (*Public Prosecutor v (1) Sakthikanesh s/o Chidambaram (2) Vadana Kumar s/o Chidambaram* [2016] SGDC 285 (the "*Chidambaram*") at [19]) that the sentencing framework set out by the High Court in *JBC* was only applicable to cases where the defaulter has a substantial connection to Singapore. Relying on indicators such as that the brothers had applied for and gotten Singapore NRICs, obtained Singapore passports and used them for travel, and the fact that their mother remained a co-owner of an HDB flat, the district judge found, on the facts, that the brothers did have a substantial connection to Singapore, and that the sentencing framework set out in *JBC* was therefore applicable to them (see *Chidambaram* at [28]).

22 The district judge then noted that under *JBC*, the main factor for determining the appropriate sentence for an NS defaulter was the number of years of his default. There were a number of other factors set out in *JBC* that would affect the sentence, such as whether the defaulter had voluntarily surrendered, whether he had pleaded guilty, and his performance during NS (see *Chidambaram* at [21]). Leaving aside the issue of NS performance, and taking

into account the length of the brothers' periods of default as well as the fact that they had voluntarily surrendered and also pleaded guilty, the district judge determined, based on a sentencing graph set out in *JBC*, that the sentence for Sakthikanesh would have been about 10 weeks' imprisonment while that for Vandana would have been six weeks' imprisonment (see *Chidambaram* at [35]). The district judge then considered that both brothers had performed exceptionally well in NS (see *Chidambaram* at [38]-[39]), and that this, on the authority of *JBC*, merited a sentencing discount. In *JBC*, the High Court had set out a "discount table" where sentencing discounts, fixed based on the age that an NS defaulter returned to serve NS, was to be given to defaulters who performed exceptionally well during NS. Applying this table, Sakthikanesh and Vandana were each given a sentencing discount of one-and-a-half months (roughly six weeks) (see *Chidambaram* at [40]-[41]). This resulted in a sentence of four weeks' imprisonment for Sakthikanesh, and a fine (pegged at the statutory maximum of $10,000) for Vandana.

23 The district judge then proceeded to apply a further discount, in relation to the brothers, to take into account what he termed "the weaker fair share argument". He noted the High Court's observation in *JBC* that the sentencing of overseas defaulters was generally premised on the fair share argument, which presumed that defaulters had enjoyed (or would enjoy) the benefits of Singapore citizenship and so it was fair to sanction them when they refused to fulfil their NS obligations at a time similar to their local peers, in order to make good any inequity. Although the district judge had found that the brothers had a substantial connection to Singapore, he was of the view that the substantial connection in this case was of a "weak type". Since the brothers, having grown up in India, did not benefit in any way from the education system in Singapore and had not enjoyed the benefits of our social and physical infrastructure (see

Chidambaram at [28]), he was of the view that a further reduction in sentence was warranted. The district judge eventually arrived at a sentence of three weeks' imprisonment for Sakthikanesh, and a fine of $6,000 for Vandana (in default three weeks' imprisonment) (see *Chidambaram* at [40]-[42]).

24 By the time the present appeals were heard, Sakthikanesh had completed serving his sentence of three weeks' imprisonment and had taken up employment in Singapore[2]. Vandana had returned to India after paying his fine and was months away from completing his studies there when he came back to Singapore for the hearing.

For MA 9312

25 The district judge who sentenced Ang found that Ang had a substantial connection with Singapore; Ang had reaped the benefits of a local education (primary as well as part of his secondary school education), he never renounced his citizenship but had instead used his Singapore passport as a basis for his continued stay in the US, his family maintained a home in Singapore, and having now returned to Singapore he would continue to enjoy the socio-economic benefits of being a Singaporean. The district judge considered that the threshold for a custodial sentence was clearly crossed, and Ang's counsel conceded as much (see *Public Prosecutor v Ang Lee Thye* [2017] SGDC 7 ("*Ang Lee Thye*") at [40]).

26 The sole issue was the appropriate length of the imprisonment term to be imposed for the two charges. The district judge noted that Ang's period of default, totalling 23.5 years, was the highest in recent years. She rejected the

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[2] Appellant's Submissions for MA 9259 and 9260, dated 13 April 2017, at [2].

Prosecution's submissions that the appropriate sentence for a hypothetical NS defaulter who was arrested and claimed trial and who returned to Singapore after he could no longer serve NS should receive the statutory maximum sentence of three years' imprisonment, and that since Ang had voluntary surrendered and pleaded guilty, the appropriate sentence for him was 30 months' imprisonment (see *Ang Lee Thye* at [45]). In the district judge's view, merely having those three factors – being arrested, claiming trial and no longer being able to serve NS – was not, on its own, sufficient to attract the maximum imprisonment term of three years. In order to attract this maximum penalty, the offender would need to have NS-related antecedents as well (see *Ang Lee Thye* at [46]).

27 Applying the sentencing framework set out in *JBC*, the district judge classified Ang as a Scenario 3 "less culpable offender", as he had voluntarily surrendered and pleaded guilty. Based on the sentencing curve in *JBC*, the benchmark sentence for a defaulter like Ang would be 12 months' imprisonment (see *Ang Lee Thye* at [43]), and this was the base sentence considered by the district judge for Ang (see *Ang Lee Thye* at [44]). The district judge noted, however, that an uplift in the sentence was warranted in Ang's case as the High Court in *JBC* had qualified that the benchmark sentences set therein assumed that the defaulter would still be able to perform his NS upon return, and that where the defaulter was no longer able to do so (as in Ang's case), the benchmark sentence must be adjusted upwards. Since the court in *JBC* had held that the mere fact that an NS defaulter had pleaded guilty merited a sentencing discount of one quarter off the original sentence, the district judge determined that the upper limit of Ang's sentence must be 27 months' imprisonment (this being a quarter less than the statutory maximum sentence of 36 months' imprisonment).

28 Having arrived at a sentencing range of 12 – 27 months' imprisonment for Ang as the starting point (see *Ang Lee Thye* at [47]), the district judge then proceeded to consider whether there were other aggravating or mitigating factors. She was of the view that there were little in Ang's personal circumstances to commend him. Ang had been in communication with CMPB since 2001 when he was 27 years old, his NS liabilities were clearly explained to him, and he was advised to return to Singapore to discharge those responsibilities. He chose not to return. The district judge was unpersuaded by Ang's pleas that he had to stay in New York to take care of his parents, and further because he had an eye condition that required constant medication (see *Ang Lee Thye* at [48]). The fact that Ang was a one-time defaulter was a neutral factor (see *Ang Lee Thye* at [52]). Nonetheless, the district judge was of the view that the maximum sentence of 27 months' imprisonment within the sentencing range that she had defined was to be reserved for the defaulter who, although had pleaded guilty, was arrested and had NS-related antecedents and could no longer serve NS by the time of his arrest. Since Ang had pleaded guilty, voluntarily surrendered and had no NS-related antecedents, the district judge was of the view that a term of 24 months' imprisonment for the first charge and 15 months' imprisonment for the second charge were appropriate. The two imprisonment terms were ordered to run concurrently, resulting in an aggregate sentence of 24 months' imprisonment.

The current law

29 As both district judges who sentenced the brothers and Ang purported to have applied the High Court's decision in *JBC*, it would be necessary for us to set out the salient points of that decision. Before doing so, we will first lay out the statutory provisions in the Act relating to NS defaulters.

The relevant statutory provisions

30 For MAs 9259 and 9260, the brothers were charged under s 9 of the Act for failing to comply with a FRO. Each had one other charge under s 32(1) of the Act for remaining outside Singapore without a VEP taken into consideration. For MA 9312, Ang faced two charges under s 32(1) for remaining outside Singapore without a VEP. Offences under both ss 9 and 32(1) are punishable under s 33 of the Act. Depending on the facts, an NS defaulter may also be charged under s 3 and punished under s 4 of the Act, as was the case in *Mohammed Ibrahim s/o Hamzah v Public Prosecutor* [2015] 1 SLR 1081 ("*Mohammed Ibrahim*"). For ease of reference, these statutory provisions are set out below:

> **Persons required to register**
>
> **3.**—(1) The proper authority may from time to time by notice require a person subject to this Act to report for registration and for fitness examination for the purposes of service under this Act.
>
> (2) A person required to report for registration and fitness examination under subsection (1) shall report to the proper authority at such date, time and place as may be specified in the notice and shall attend from day to day until duly registered and examined.
>
> **Registration**
>
> **4.**—(1) A person required to report for registration shall…
>
> (2) Any person affected by a notice given under section 3(1) who, without lawful excuse, fails to present himself for registration in accordance with the notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.
>
> **Further reporting**
>
> **9.** The proper authority may, at any time, require a person subject to this Act who is liable to report for registration or a fitness examination to report again on such other occasions as may be considered necessary.

> **Exit permits**
>
> **32.**—(1) A person subject to this Act who has been registered under section 3 or is deemed to be registered or is liable to register under this Act, or a relevant child, shall not leave Singapore or remain outside Singapore unless he is in possession of a valid permit (referred to in this Act as exit permit) issued by the proper authority permitting him to do so.
>
> **Offences**
>
> **33.** Except as provided in section 32(3) and (4), any person within or outside Singapore who —
>
> *(a)* fails to comply with any order or notice issued under this Act;
>
> *(b)* fails to fulfil any liability imposed on him under this Act;
>
> *(c)* fraudulently obtains or attempts to obtain postponement, release, discharge or exemption from any duty under this Act;
>
> *(d)* does any act with the intention of unlawfully evading service;
>
> *(e)* gives the proper authority or any person acting on his behalf false or misleading information; or
>
> *(f)* aids, abets or counsels any other person to act in the manner laid down in paragraph (a), (b), (c), (d) or (e),
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

31 In *Mohammed Ibrahim*, where the NS defaulter was charged under s 3 of the Act, we held (at [30]) that in determining the appropriate sentence, an analogy could be drawn with cases concerning offences punishable under s 33 of the Act. The factual situations giving rise to offences under ss 3, 9 or 32 of the Act often overlap and when they do, it would be a matter of an exercise of prosecutorial discretion as to which particular provision an NS defaulter should be charged with. The sentences which should be imposed for offences under these provisions should, however, be comparable. The Act prescribed the same punishment for these offences, *ie* the offender shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding three

years or to both. In these grounds of decision therefore, we refer to "NS defaulters" as if they were a single class of offenders, although they might have been charged under different sections of the Act.

The decision in JBC

32 We now turn to *JBC*, where Chan Seng Onn J ("the Judge") discussed the effect of the following factors in determining the appropriate sentence for an NS defaulter:

(a) The number of years the defaulter evaded NS;

(b) Whether the defaulter voluntarily surrendered or was arrested;

(c) Whether the defaulter pleaded guilty or claimed trial; and

(d) Whether the defaulter had performed exceptionally well during NS.

33 Citing *Mohammed Ibrahim*, the Judge held (at [27] and [47]) that there was a strong correlation between the culpability of an NS defaulter and the number of years he evaded NS, and hence the primary factor that would influence his sentence would be the length of his period of default. This was because by placing priority on their individual pursuits over their NS obligations, such that they only return to serve at a time of their own choosing, NS defaulters not only gain a technical advantage over their peers who had to put aside their personal goals to serve NS, but also gain a real advantage in that the older they return to serve NS, the less they may be suited for a combat role and the shorter would be the time remaining for them to fully complete their

post-operationally ready date ("post-ORD") reservist obligations: see *JBC* at [25]-[26].

34 In the Judge's view, the relationship between the degree of culpability of an NS defaulter and the length of his period of default was not linear across the sentencing spectrum. The rate of increase in culpability was to increase with the length of the period of default, since the earlier a defaulter returned to serve NS, the greater his utility would be to NS, presumably because his level of fitness would decrease with age: see *JBC* at [47]. The Judge then added (at [48]) as follows:

> However, it is also recognised that one part of the fair share argument that relates to the prospective gains from citizenship weakens the longer an offender stays overseas. Therefore, an offender who returns much later in the day, arguably, will prospectively enjoy less benefits of Singapore citizenship than one who returns earlier, serves his NS and thereafter remains in Singapore. While this factor decreases the culpability of the offender at an increasing rate the longer he stays away from Singapore, the decrease in culpability would generally be of a smaller magnitude when compared to the increase in culpability from evading NS by being overseas longer without a VEP; the latter factor is assigned greater weight in determining an appropriate sentence. The net result is that one might graphically expect the gradient of the sentencing curve to increase gradually over a large part of the sentencing spectrum and eventually flatten out as one moves towards the right along the x-axis.

By the "fair share argument", the Judge was referring to the argument that every citizen who has enjoyed (or will enjoy) the benefits of Singapore citizenship has a duty to do his fair share to sustain the social arrangements from which all benefit. This entails every citizen who is required to serve NS making sacrifices or postponing individual goals to serve the nation when the nation needs his service: see [1], [24] and [34] of *JBC*.

35 The Judge held (at [36]) that, as a starting point, the custodial threshold in sentencing an NS defaulter would generally be crossed when the length of his period of default was more than two years. This would, however, apply only when the NS defaulter could be said to have a "substantial connection" to Singapore, as the fair share argument would not apply with equal force if he had left Singapore at a very young age such that his connection to Singapore might be merely incidental and one relating only to his place of birth, and he had not enjoyed the benefits of Singapore citizenship.

36 As to the effect of voluntary surrender, the Judge, citing *Mohammed Ibrahim*, held (at [51]) that the fact that an NS defaulter had been arrested or that he had an intention to evade NS were not aggravating factors but merely neutral because those were characteristic of the archetypal/base case. In contrast, voluntary surrender was a mitigating factor. The Judge then adopted (at [52]) a view that a voluntary surrender later in the day should be accorded more mitigating weight as opposed to a surrender very early in the day, on the reasoning that the longer the period of default, the less the defaulter would be incentivised to return to Singapore and voluntarily surrender, and so presumably he ought to be given more credit if, despite of this, he decided to surrender.

37 In addition, the Judge held (at [53]) that an NS defaulter who pleaded guilty should receive a sentencing discount of about one-quarter. He noted, empirically, that most NS defaulters charged under the Act had pleaded guilty.

38 With respect to the factor of an NS defaulter's subsequent performance during NS, the Judge held (at [54]) that unremarkable performance during NS would generally be treated as a neutral factor, as the offender should only be once punished for evading his NS obligations. However, if an NS defaulter

performed "exceptionally well during his full-time NS, *ie*, entered command school and/or received good testimonials from his superiors", this should be treated as a strong mitigating factor (at [55]). This was because his exceptional performance "counterweigh[ed] strongly against his extraction of an unfair advantage". Nonetheless, the mitigating value of an NS defaulter's exceptional NS performance would decrease with the age of his return to serve NS, as the younger he was when he returned to serve, the more likely he would be able to contribute to NS with the same tenacity during his post-ORD reservist obligations.

39 Based on the above considerations, the Judge identified three scenarios that a sentencing court might be confronted with in relation to an overseas NS defaulter who had a substantial connection to Singapore, and set out a sentencing curve for each of the three scenarios. The three scenarios identified were as follows (at [57]-[59]):

> **Scenario 1: Base case**
>
> The hypothetical offender has the following characteristics:
>
> (a) begins evading his obligations when he is due to register for NS at 16 years and six months old, *ie*, the number of years he spends without a VEP should be computed from the age he returns to Singapore to serve NS minus 16 years and six months;
>
> (b) is arrested;
>
> (c) pleads guilty; and
>
> (d) has unexceptional performance at NS
>
> **Scenario 2: A more culpable offender**
>
> Relative to the base case, a hypothetical offender who has the following characteristics would be more culpable:
>
> (a) begins evading his obligations when he is due to register for NS at 16 years and six months old, *ie*, the number of

years he spends without a VEP should be computed from the age he returns to Singapore to serve NS minus 16 years and six months;

(b) is arrested;

(c) claims trial; and

(d) has unexceptional performance in NS.

Scenario 3: A less culpable offender

Relative to the base case, an offender who has the following characteristics would be less culpable:

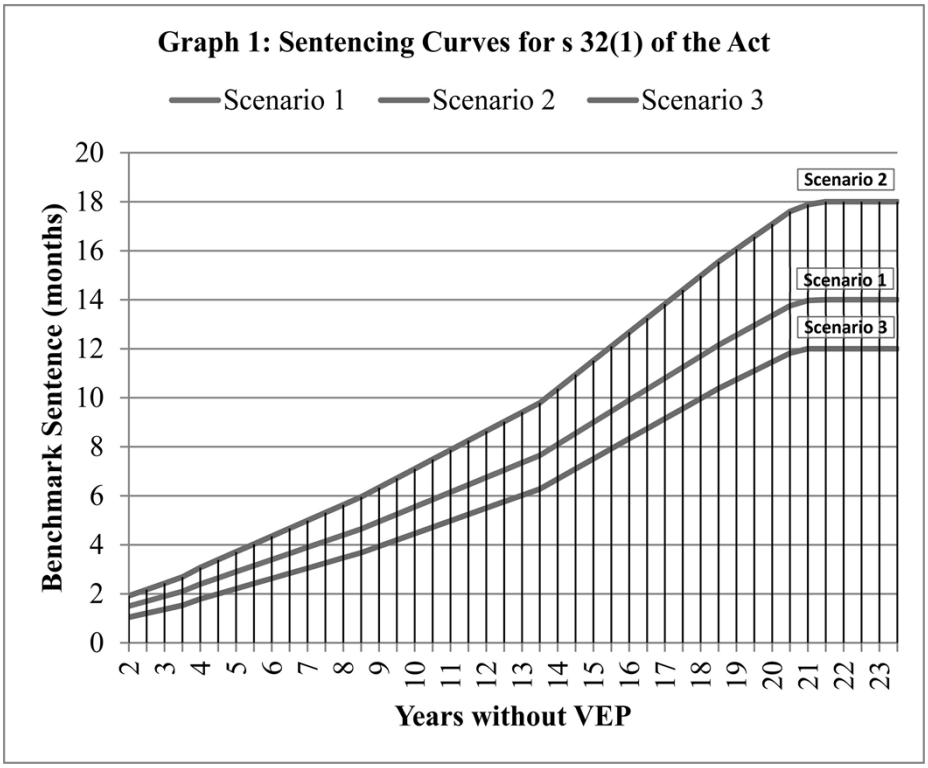
(a) begins evading his obligations when he is due to register for NS at 16 years and six months old, *ie*, the number of years he spends without a VEP should be computed from the age he returns to Singapore to serve NS minus 16 years and six months;

(b) voluntarily surrenders;

(c) pleads guilty; and

(d) has unexceptional performance in NS.

40 The sentencing curves are reproduced below:



The curves plateau as they moved along the x-axis as the Judge was of the view that the increase in culpability of an NS defaulter as the length of his period of default increases was tempered by a corresponding decrease in culpability premised on the fair share argument, since an NS defaulter who returned later would prospectively enjoy less benefits of Singapore citizenship than one who had returned earlier (see [34] above). The curve for Scenario 2 was derived from that of Scenario 1 by applying a linear percentage increment (or a fixed multiplicand) to the input values for Scenario 1 to reflect the fact that the NS defaulter in Scenario 2 claimed trial. The curve for Scenario 3 was derived by applying a non-linear discount to the sentence imposed in Scenario 1 to reflect the fact that NS defaulter voluntarily surrendered, with the discount spanning from about half a month at the start of the spectrum on the x-axis (*viz*, two years without VEP) and increasing to about two months towards the end of the

spectrum on the x-axis (*viz*, 21 years without VEP). The Judge's reasons for applying different sentencing discounts to reflect the fact that the NS defaulter had voluntarily surrendered have been set out at [36] above.

41 The Judge further held that if an NS defaulter performed exceptionally well during NS when he subsequently enlisted, that would merit a fixed block discount, the quantum of which would depend on the age when he returned (see [38] above). The discount to be applied to the benchmark sentence to take into account an NS defaulter's exceptional NS performance was set out in Table 3 of the judgment in *JBC*, and is reproduced below:

Age when offender returns	Discount to benchmark sentence for exceptional performance in NS
Below 20 years of age	Two months
20–25 years old	One-and-a-half months
25–30 years old	One month
30–35 years old	Three-quarters of a month
35–40 years old	Half a month

42 We were unable to adopt the Judge's sentencing curves and sentencing discount table. We agreed with the Judge that the primary factor determining an NS defaulter's culpability, and hence his sentence, would be the length of his period of default, and that the custodial threshold would generally be crossed when the period of default exceeds two years. We also agreed with the Judge that voluntary surrender might be a mitigating factor in the sentencing of NS defaulters, but departed from his reasoning that the mitigating value should increase with the length of the period of default – we saw no logic why the longer the period of default, the greater should be the mitigating value given when the NS defaulter voluntarily surrendered. We also disagreed that the sentence to be meted out to an NS defaulter should be calibrated based on

whether he had a substantial connection to Singapore, or the amount of benefits he had enjoyed or would enjoy as a Singapore citizen. In addition, we disagreed that a discount of one-quarter, or for the matter any fixed discount, should be given when an NS defaulter pleaded guilty instead of claiming trial; such an approach ignored the fact that very often such default cases were clear and there was little room to dispute liability. Finally, unlike the Judge, we were of the view that exceptional NS performance should not be a mitigating factor in the sentencing of an NS defaulter. We elaborate below.

The issues in the present appeals

43 In MAs 9259 and 9260, the Prosecution urged us to enhance Sakthikanesh's and Vandana's sentences to imprisonment terms of not less than two months and not less than six weeks respectively. The thrust of the appeals was that, contrary to the decision in *JBC*, exceptional NS performance should not be regarded as a mitigating factor in the sentencing of NS defaulters.

44 In MA 9312, the Prosecution sought an enhancement of Ang's aggregate sentence from 24 months' imprisonment to at least 30 months' imprisonment. It argued that as Ang had defaulted on his NS obligations for 23.5 years and evaded the whole of his NS obligations, his case falls in the worst category of the offence and the district judge erred in not adopting the statutory maximum sentence of 36 months' imprisonment as the starting point. The Prosecution also submitted that the district judge had erred in placing excessive weight in Ang's voluntary surrender and plea of guilt.

45 The present appeals were thus an opportunity for us to review a number of issues relevant to the sentencing of NS defaulters. We first considered the issue of whether exceptional NS performance should be a mitigating factor in

the sentencing of NS defaulters, and if so, what would constitute exceptional NS performance and how any sentencing discount was to be applied. We then considered how other factors, such as the length of the period of default, an NS defaulter's degree of substantial connection to Singapore, whether he claimed trial or pleaded guilty, and whether he voluntarily surrendered or was arrested, could play a part in the determination of the appropriate sentence, before setting out general benchmarks for the sentencing of NS defaulters. We appointed an *amicus curiae*, Mr Daniel Gaw, to assist us in resolving the legal issues pertaining to exceptional NS performance. We are grateful for his submissions, which we had taken into account in our deliberation.

46 Before turning to the analysis, there was a preliminary matter which pertained to the Prosecution's application in CM 13 of 2017 to adduce fresh evidence in the form of an affidavit by MINDEF's Director of Manpower setting out MINDEF's policies pertaining to NS and its position with regard to the sentencing of NS defaulters. As the contents of the affidavit were in the nature of submissions and not of evidence, we made no orders as to CM 13 of 2017, but permitted the Prosecution to refer to the affidavit as part of its submissions for the appeals.

Analysis

The underlying principles affecting NS and the key objective in sentencing NS defaulters

47 We begin by observing that the underlying principles affecting NS are national security, universality and equity. This was spelt out by the then Minister for Defence, Mr Teo Chee Hean, in a Ministerial Statement made in Parliament in 2006 (*Singapore Parliamentary Debates, Official Reports* (16 January 2006) Vol 80 at cols 2000-2083) ("the Ministerial Statement"), as well

as in subsequent cases such as *Seow Wei Sin v Public Prosecutor* [2011] 1 SLR 1199 ("*Seow Wei Sin*") at [37] and *JBC* at [23]. The relevant part of the Ministerial Statement states:

> Our National Service policy is underpinned by three fundamental principles. The first is that National Service must be for meeting a critical national need - for it requires considerable cost both to the individual and to the nation. That critical need is national security and our survival. This is why NS men are deployed only in the Singapore Armed Forces, the Singapore Police Force and the Singapore Civil Defence Force, where they contribute directly to the security and defence of Singapore.
>
> The second fundamental principle of our National Service is universality. All young Singaporean males who are fit to serve are conscripted. If we have a system in which some are conscripted but others are not, there will be strong feelings of unfairness which will undermine the commitment of our NS men... MINDEF has always been very clear that National Service must be universal - all who are fit to serve National Service must serve.
>
> The third fundamental principle of our National Service is equity. Everyone has to be treated in the same way, regardless of background or status. His deployment in NS is determined by where he is most needed to meet the needs of the national defence.

A key corollary of the principle of equity is that everyone who is required to serve NS must also serve NS at around the same age. This was put in the following terms by Mr Teo Chee Hean in *Singapore Parliamentary Debates, Official Reports* (16 January 2006) Vol 80 at cols 2075-2076:

> But more importantly, we must bear in mind our fundamental principle of equity, not just in terms of whether one serves National Service or not, but also in terms of when one serves National Service. A deferment policy can be flexible only to the extent where equity is maintained. Otherwise, as I have said, there will be a loss of morale and commitment if it is perceived that some can get deferred to pursue their personal goals while others have to serve. As far as possible, we also want pre-enlistees of the same school cohort to enlist for National Service at around the same time. This helps in terms of bonding the

> cohesion of the units and their fighting spirit and also ensures equity in that they all bear similar interruptions to their studies or careers.

In practical terms, what the three fundamental principles of national security, universality and equity mean is that in order to ensure Singapore's national security, every male Singaporean must serve NS and at the time he is required to under the Act, without regard to his personal convenience and considerations.

48 When a person refuses to serve NS at the time that he is required to and instead returns to serve at a time of his own choosing, or worse, at an age when he can no longer serve, his actions strike at the very core of the principles of national security, universality and equity. As his peers put aside their individual pursuits to serve NS when they were called upon to, the NS defaulter makes an exception for himself, where no exceptions are permitted. Lenient treatment of NS defaulters can create strong feelings of unfairness and resentment in those who have made personal sacrifices to serve NS and over time, lower their morale and eventually also erode public support for NS. The punishment for NS defaulters must also be sufficiently severe, so as to deter potential offenders from evading their obligations or opting to postpone them to a time of their own convenience. Were it otherwise, the perception that NS can be done on one's own terms would undermine the strength of our defence force and thus our national security. We therefore reiterated what had been said in previous decisions, that general deterrence is the key sentencing objective in the sentencing of NS defaulters: see *Lim Sin Han Andy v Public Prosecutor* [2000] 1 SLR(R) 643 at [18]; *Seow Wei Sin* at [36] and *Mohammed Ibrahim* at [22].

Whether exceptional NS performance should be a mitigating factor in the sentencing of NS defaulters

49 With the foregoing key principles underlying NS in Singapore and the sentencing objective of general deterrence as the backdrop, we turn to address the issue of whether any mitigating value should be accorded in sentencing an NS defaulter if he performed exceptionally well when he subsequently enlisted.

50 In our judgment, the standard of performance of an NS defaulter who returned to serve NS should not, as a general rule, be a relevant consideration for the purpose of sentencing. It is a fundamental principle that a sentence serves to punish the offender for the wrong he has done and the harm he has occasioned in committing the offence. We agreed with the submissions of both the *amicus curiae* and of the Prosecution, that exceptional NS performance, which happens after the conduct constituting the offence, reduces neither the defaulter's culpability nor the harm he had caused by his offence.

51 The culpability of NS defaulters lies in the unfair advantage that they gain over their law-abiding peers by being able to pursue their personal goals (such as education or career advancements), while their peers were serving their NS obligations. In cases involving extended periods of defaults, the NS defaulters' culpability also lies in the fact that they had in fact avoided part of or the whole of their NS obligations, if they returned at an age where they could no longer serve full-time NS or complete their post-ORD reservist obligations in full. NS defaulters thus violate the fundamental principles of universality and equity.

52 There are multiple facets to the harm occasioned by NS defaulters. At one level, by choosing to serve their NS obligations not when they are required

but only when it is convenient for them (or in some cases evading part of or the whole of their NS obligations), NS defaulters harm the operational readiness of the armed forces. At another level, they also harm the morale of fellow citizens who have made personal sacrifices to serve their NS obligations when they were called upon to do so. This can in turn lead to repercussions such as growing resentment and the loss of public support for NS, threatening the ability of our armed forces to ensure Singapore's national security (see [48] above). Each and every member of the Singapore public would then become a victim.

53 In *JBC*, the Judge recognised (at [25]) that the sentences meted out to NS defaulters were intended to "[sanction] against individuals deferring their NS so as to further their education or life pursuits in a manner that amount[ed] to [them] gaining an advantage over their peers who [had] to postpone such pursuits". However, he also took the view that exceptional NS performance was a mitigating factor because it "counterweigh[ed] strongly against his extraction of an unfair advantage" (see [38] above). With respect, we were unable to see how this was so. If the reasoning was that when an NS defaulter performed well during NS, he was making good contributions to Singapore's defence and that reduced the harm from his earlier defaulting, we would disagree. Subsequent exceptional performance during NS would not reduce any of the harm identified at [52] above that was occasioned by an NS defaulter. Neither would it reduce the NS defaulter's culpability for the fact remained that he had gained an unfair advantage over his peers in terms of the timing of his service. In our judgment, treating exceptional NS performance as a mitigating factor could in fact fuel feelings of inequity and resentment that law-abiding male Singapore citizens who had made personal sacrifices to serve NS might have, with the associated repercussions. This was because exceptional NS performance would be determined not just by the individual's attitude and effort, but also by his innate

aptitude and abilities such as physical fitness. Allowing an NS defaulter to enjoy a discount off his sentence because he performed well when he finally decided to serve NS might be seen as, or tantamount to, giving preferential treatment to certain individuals with certain qualities. We agreed with the submissions of both the *amicus curiae* and the Prosecution that treating NS performance as a mitigating factor would introduce inequity to the sentencing process, because it would unfairly prejudice not only NS defaulters who were less fit physically but also those who were charged and sentenced before they had substantially performed their NS obligations and so could not have the opportunity to have their performance at NS assessed.

54 Further, we were of the view that recognising exceptional NS performance as a mitigating factor could undermine the sentencing objective of general deterrence Doing so might send a message to potential defaulters that they can defer their NS obligations and try to make up for them later by performing well. In other words, it could create a perverse incentive for physically fit individuals to choose unlawfully to serve their NS later, when they were in fact the ones most needed to enlist at the time that they were required to. They could be encouraged to make the strategic calculation that the benefits of being able to pursue their personal goals first would outweigh the potential costs since they would be able to mitigate the impact of their wrongful act by subsequently doing well when they eventually enlist.

55 Finally, we rejected the argument that exceptional NS performance should be accepted as a mitigating factor because it is the duty of every National Serviceman to perform well. Indeed, it is the obligation of every male Singaporean to do his best in his NS. That is simply a matter of national pride and loyalty. It seems to us wrong for a defaulter who does no more than that

what many, if not most, of his law-abiding fellow National Servicemen are doing should be rewarded in this way. In the course of the arguments before us, it became apparent to us that MINDEF had put in place a system to recognise and to reward National Servicemen for good performance, such as the selection of Company Soldier of the Month (an honour that Vandana received). It was the prerogative of MINDEF to put in place such a system to recognise and reward National Servicemen for good performance, but that system should not be accorded further recognition so as to reduce the appropriate sentence to be imposed on an NS defaulter.

56 We therefore held that, as a general rule, the standard of performance of a defaulter who returned to serve NS was irrelevant in the sentencing of that defaulter. Given this holding, there was no need for us to consider the issues of what kinds of performance would constitute exceptional NS performance that would merit a sentencing discount, or how the sentencing discount was to be determined and applied. We left open the possibility that truly exceptional acts of valour or heroism, such as saving another soldier's life or volunteering for a dangerous mission, might well qualify for some consideration, as that was not in issue in the present appeals.

Factors determining the appropriate sentence

Length of period of default

57 We reiterated what we said in *Mohammad Ibrahim* (at [33] above), that the length of the period of default would, as a general rule, be the key consideration in the determination of the appropriate sentence for an NS defaulter, although all the circumstances surrounding the commission of the

offence should be taken into account as well. We reproduce the relevant paragraph of the judgment in *Mohammad Ibrahim* at [37] below:

> The length of the period of default is an important factor, but not the only factor to be taken into account in determining the appropriate sentence to be imposed for an offence under the Act. We agreed with what was stated in *Seow Wei Sin* (at [33]) that the seriousness of an offence under the Act should not be determined purely on the basis of the length of period of default, but should also take into account all the circumstances surrounding the commission of the offence. That said, the length of the period of default will usually be the key indicator of the culpability of the offender and accordingly, how severe a sentence ought to be imposed on the offender. This makes eminent sense because the length of the period of default also has a direct correlation to the likelihood of the offender being able to serve his NS duties in full. This is because the longer the period of default, the less likely the offender will be able to discharge his NS obligations and contribute to the security and defence of Singapore, which is the public interest underpinning the Act…

58 Under the Act, an NS defaulter may be punished with a fine not exceeding $10,000, or a custodial sentence not exceeding 36 months' imprisonment (see [30]-[31] above). In the Ministerial Statement, the then Minister for Defence Mr Teo Chee Hean set out (at cols 2014-2015), in the following terms, MINDEF's position in relation to the appropriate sentences to be meted out to NS defaulters who return after varying periods of default:

> MINDEF does not consider it necessary at this time to seek a minimum mandatory jail sentence for Enlistment Act offences, as the circumstances of the cases vary widely. However, from now on, MINDEF will ask the prosecutor to press for a jail sentence in serious cases of NS defaulters, and explain why we consider a jail sentence appropriate in a particular case. Serious cases include those who default on their full-time National Service responsibilities for two years or longer from the time they were required to register or enlist, or from the time their exit permits expired for those granted deferment, whichever is later. We believe that it is in the public interest that such NS defaulters face a jail sentence, unless there are mitigating circumstances

> I would like to provide some illustrations of what MINDEF considers to be sentences appropriate to the nature of the offence or commensurate with its gravity:
>
> > (a) Where the default period exceeds two years but the defaulter is young enough to serve his full-time and operationally ready NS duties in full, MINDEF will press for a short jail sentence.
> >
> > (b) Where the defaulter has reached an age when he cannot serve his full-time NS in a combat vocation or fulfil his operationally ready NS obligations in full, a longer jail sentence to reflect the period of NS he has evaded may be appropriate.
> >
> > (c) Where the defaulter has reached an age when he cannot be called up for NS at all, a jail sentence up to the maximum of three years may be appropriate.
>
> In all instances, we expect that the Court will take into account whatever aggravating or mitigating circumstances there may be in each case to determine the appropriate sentence.

59 The effect of the Ministerial Statement had been considered in *Mohammed Ibrahim* (at [18]-[21]). In that case, we decided that while the Ministerial Statement was no more than an expression of the prevailing prosecutorial policy and should thus not *ipso facto* be adopted by the courts in the sentencing process, it remained significant insofar that it might reveal Parliament's public policy considerations in relation to the punishment provisions of the Act, which should in turn inform the courts as to the sentencing policy that should be adopted.

60 After considering the sentencing precedents, we observed in *Mohammed Ibrahim* (at [35] and [38]) that cases involving short periods of default of two years or less would generally not attract a custodial sentence. We said that as a general observation, with the reminder that the appropriate sentence in each case should be considered taking into account all its circumstances.

61 In our view, the setting of the custodial threshold at the two-year mark was a principled one. As pointed out by the Prosecution, a person who had defaulted on his NS obligations for two years would have missed the entirety of the service duration of his cohort, meaning that he would only commence serving full-time NS when his peers had already completed theirs. This derogated from the fundamental principle of equity which, as we have noted at [47], entailed everyone who is required to serve NS to serve at around the same age, so that they would all bear similar interruptions to their studies or careers at similar stages of their lives. However, such an NS defaulter would have gained a real and tangible unfair advantage over his law-abiding peers who had put their personal interests on hold, with the associated opportunity costs, to serve NS[3].

62 At the other end of the custodial range, we were of the view that the statutory maximum sentence of 36 months' imprisonment should be the starting point in the sentencing of NS defaulters whose period of default was around 23 years or more, as they would not only have evaded the whole of their full-time NS obligations, but also their post-ORD reservist obligations. These offenders would constitute the worst category of NS defaulters.

63 The principles governing the imposition of maximum sentences have been set out in *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 ("*Sim Gek Yong*"). Citing the English case of *R v Ambler* [1976] Crim LR 266 and the Australian case of *R v Tait and Bartley* (1979) 24 ALR 473, Yong Pung How CJ held (at [13]) that a court, in deciding when to impose the maximum sentence, need only identify a range of conduct which characterises the most

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[3] Prosecution's Submissions at [27].

serious instances of the offence in question. This would involve consideration of both the nature of the crime and of the circumstances of the offender. The maximum sentence may be imposed so long as a particular case falls within the range of conduct which characterises the most serious instances of the offence; there is no need for the court to be convinced that the case is the "worst case imaginable", as to insist on this would only invite "an endless permutation of hypotheses". If it were so, since the addition of non-existing but aggravating circumstances would never be beyond the reach of imagination, the result may well be that the maximum sentence would never actually be imposed: see [11] and [12] of *Sim Gek Yong*.

64 The conduct of an NS defaulter who defaulted for such a long period of time, such as when he returned past the age of 40 and it was no longer possible for him to serve any of his NS obligations, would fall within the range of conduct which characterises the most serious instances of the offence. Such an offender would not only have refused to serve at the time that he was required to, he would also have evaded his NS obligations in their entirety. Currently, every male Singapore Citizen who is required to serve NS must serve two years of full-time NS. He must also serve his post-ORD reservist obligations, which, according to MINDEF, may potentially add up to 400 days of service during peace-time (based on ten years' of reservist cycles and a maximum annual call-up of 40 days)[4]. The NS defaulter thus gains an unfair advantage over his peers in being able to pursue his personal interests during the more than three year period that his peers were serving NS. In our judgment, to adopt anything less than the statutory maximum sentence of 36 months' imprisonment as the

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[4] Prosecution's Submissions at [45].

starting point in the sentencing of this category of NS defaulters would be inadequate.

65 We therefore reached the conclusion that in sentencing NS defaulters who have defaulted for such long periods of time that they have evaded the entirety of their NS obligations, the statutory maximum punishment of 36 months' imprisonment must be the starting point.

66 In between the two ends of the custodial range (*ie* those who crossed the custodial threshold by defaulting for two years or more and those who defaulted for so long that they evaded the whole of their NS obligations and so attracted the maximum sentence) would be those who, by reason of their default, had impaired their ability to serve their NS obligations, either in terms of their physical ability or in terms of duration. The sentence to be meted out to an NS defaulter should not, in our judgment, increase linearly with the length of his period of default. Rather, the rate of increase in sentence should be amplified with longer periods of default, to reflect the decline in a person's physical fitness with age (and hence his ability to serve NS especially in a combat vocation), and to create a progressive disincentive for NS defaulters to delay their return to resolve their offences. In addition, as pointed out by the Prosecution, an NS defaulter who returns after more than 10 years of default would unlikely be able to serve his post-ORD reservist obligations in full before he reaches the statutory age of 40[5]. This warranted, in our judgment, a spike in the sentence to be meted out to an NS defaulter once his period of default crosses the 10-year mark.

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5 Prosecution's Submissions at [34].

67 We took in all of the above considerations in setting out the sentencing benchmarks at [87]-[91] below.

Degree of substantial connection of NS defaulter to Singapore

68 We next considered whether the degree of an NS defaulter's connection to Singapore was a factor that should feature in the sentencing process.

69 In *JBC*, the Judge, while observing that the culpability of an NS defaulter increases with the length of his period of default, also took the view that since an NS defaulter who returned later would prospectively enjoy less benefits of Singapore citizenship than one who returned earlier, his culpability would, from this perspective and on the basis of the "fair share argument", be reduced the longer he stayed away from Singapore (see [34] above). Purporting to apply *JBC*, the district judge who sentenced Sakthikanesh and Vandana gave each of the brothers a sentencing discount as he regarded them to have a "weak type" of connection to Singapore, having grown up and received their education in India and not having benefited from Singapore's social and physical infrastructure (see [23] above).

70 We rejected the view that the sentence to be meted out to an NS defaulter should be calibrated based on whether he has a substantial connection to Singapore, or the amount of benefits he has enjoyed as a Singapore citizen. It seemed clear to us that MINDEF was the agency that had the statutory responsibility for administering the Act, and the Act made it an offence for anyone required by MINDEF to serve NS to default on his NS obligations. In the course of the hearing before us, the Prosecution informed us that under MINDEF's existing NS management framework, there was already a prior assessment conducted by MINDEF on a male Singaporean citizen's level of

connection with Singapore before it would issue an enlistment order. A male Singaporean would be allowed to renounce his citizenship and not be required to enlist, if he was assessed by MINDEF to have little connection with Singapore[6]. In our view, the determination of whether a male Singaporean has a substantial connection to Singapore and so should be required to serve NS was a matter with policy implications that was within the prerogative of MINDEF. As long as MINDEF has issued the enlistment papers to a male Singaporean, that person would need to serve NS and he would be liable for an offence under the Act if he fails to comply. Questions as to how he had been connected to Singapore, how long he had been away from Singapore, or the extent to which he had benefitted from Singapore citizenship, would generally be irrelevant to the sentencing of him as an NS defaulter. Any other view would severely undermine the principle of universality and equity by differentiating between classes of Singapore citizenship, when in truth, no such differentiation exists.

71 The case of *Seow Wei Sin* offered no support for the contrary view that the substantiality of a NS defaulter's connection to Singapore was a factor to be considered in the sentencing process. That case needed to be considered in the context of its unusual facts. Seow, the NS defaulter, was born in Singapore in 1961, but he left Singapore together with his entire family when he was one year old and they settled down in Malaysia. At that time, NS, in its present form, had not yet been implemented. Seow grew up in Malaysia, and only returned to Singapore to visit relatives on a few occasions between 1973 and 1975, with each visit lasting only a few days. In 1973, when Seow was 12 years old, his father brought him back to Singapore to register for his NRIC. A few years later,

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6 Prosecution's Submissions at [70]; Affidavit of MINDEF's Director of Manpower Lee Chung Wei dated 13 April 2017 at [14]-[15].

in 1978, his parents applied for Malaysian Permanent Resident status on his behalf, and the Malaysian authorities retained his NRIC when the application was successful. Thereafter, Seow's father dealt with all correspondence with the authorities regarding Seow's NS obligations, but Seow was never privy to these communications. In 1993, his father passed away. Seven years later, in July 2000 when Seow was almost 39 years of age, the Immigration and Checkpoints Authority of Singapore ("ICA") sent a letter to his Malaysian address, informing him about the retention of his Singapore citizenship and advising him to liaise with CMPB. The statement of facts in that case did not indicate whether he responded to that letter, but the court found that it was quite likely that he did not know how to respond since his father was the one who had handled issues relating to his NS liability. In 2008, Seow attempted to apply for a Singapore passport and that was the first time he had to personally deal with the issues of his citizenship and NS liability. He corresponded with the ICA, returned to Singapore to report to CMPB, and was subsequently arrested and charge for having defaulted on his NS obligations. The period of his default was about 23 years.

72 Seow was originally sentenced to 18 months' imprisonment, but on appeal, that was reduced to a fine of $5,000, which was the statutory maximum fine that could be imposed at that time. The court held at [37]-[39]:

> 37 To my mind, the three fundamental principles underpinning the NS policy in Singapore, *viz*, national security, universality and equity, did not apply to the Accused. Although he was a Singapore citizen by virtue of his birth here, he could not be said to be a Singaporean in any other respect. He did not live in Singapore other than for the first year of his life. He never enjoyed any of the privileges and benefits of his citizenship; he never even received or used a Singapore passport. It was clear that he did not leave Singapore in order to evade his NS liability. He had no choice in the matter at all as the family had decided to migrate to Malaysia. Given his circumstances, he would have

> had no reason to return to Singapore as he had no links here. *His Singapore NRIC was surrendered to the Malaysian authorities when he obtained his Malaysian PR status in 1978. To him, his father had resolved his NS liability issue with the authorities here; there was nothing left for him to be concerned with on that issue…*
>
> 38 On the facts of this case, I was also not persuaded that a deterrent sentence was called for. As the Accused is no longer of an age where he can commit a similar offence in future, specific deterrence would not apply in this case (see *PP v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [29]). As for general deterrence, I did not think that this was a case that should be used to send an uncompromising message to all "like-minded" offenders. While the period of default was long, it must be viewed in the light of all the circumstances alluded to earlier. The facts of this case were not of the usual kind, *eg*, persons who lived and were brought up substantially in Singapore seeking to evade their NS duties. It could hardly be characterised as the most serious instance of NS default. Bearing in mind the facts and the applicable precedents, I was of the opinion that this case did not warrant a custodial sentence. I would emphasise that this was not to say that cases of NS default should be treated lightly. But the severity of the sentence in each case must be tailored to fit the culpability of the offender and the seriousness of the circumstances surrounding the commission of the offence. *To the Accused's mind, it seemed that his father had sorted things out with the Singapore authorities regarding his NS duties. As stated earlier, his Singapore NRIC had already been taken and retained by the Malaysian authorities when his father applied for PR status in Malaysia on his behalf. He had no reason to think that he was a fugitive of the law in Singapore.*
>
> 39 Thus, while the period of default *per se* might be long, his degree of culpability for the same was far from high…
>
> [emphasis added]

73 Although the court in *Seow Wei Sin* did mention in the course of its decision that the NS defaulter in that case did not live in Singapore other than for the first year of his life and had never enjoyed any of the privileges and benefits of Singapore citizenship, that statement must be viewed in the context of the court's finding that he really did not, and had no reason, to think that his NS liability issue had not been resolved. The NS defaulter's limited connection

to Singapore was not, in itself, a relevant sentencing consideration. Rather, they formed the background as to whether he had reason to think that the Singapore authorities still required him to serve NS. Seow's father was the one who had been in communication with the Singapore authorities on his NS liability, and from Seow's perspective, given the limited time that he had spent in Singapore and the fact that he had never enjoyed the privileges and benefits of Singapore citizenship, the issue of Singapore citizenship and the associated obligation for him to serve NS were not alive to him. He did not even have his Singapore NRIC, for that was retained by the Malaysian authorities when his father obtained for him his Malaysian Permanent Resident status. From his perspective, therefore, there was little reason for him to suspect that his father had not yet resolved the issue of his NS liabilities, and that he was supposed to return to Singapore to serve NS. His reduced culpability stemmed not from his limited connection to Singapore, but rather from the fact that he genuinely did not know that he had to return to Singapore to serve NS.

74 We stressed, as we did in *Mohammed Ibrahim* (at [36]-[38]), that the facts in *Seow Wei Sin* were exceptional. We also reiterated what we said in *Mohammed Ibrahim* (at [27]), that claims of a lack of knowledge of an enlistment order would not be a lawful excuse in most cases. Section 30(3) of the Act provides that orders or notices that have been duly served on any person under the Act are deemed to have been received and read or heard by that person. Further, under s 30(6) of the Act, where a person has under s 30(3) of the Act been deemed to have knowledge of an order or notice issued under the Act, ignorance of the fact that the order or notice has been duly served on him is not an excuse for failing to comply with that order or notice.

Whether the NS defaulter voluntarily surrendered or was arrested

75 We turn now to consider the question as to how the fact that an NS defaulter voluntarily surrendered should be taken into account in the sentencing process.

76 In *Mohammed Ibrahim*, we held (at [39]-[41]) the fact that an NS defaulter voluntarily surrendered to the authorities might operate as a mitigating factor, although the failure to voluntarily surrender was only a neutral factor.

77 In our view, there were two broad reasons for treating voluntary surrender as a mitigating factor. The first was that it could be evidence of remorse and a willingness to face punishment: see *Wong Kai Chuen Phillip v Public Prosecutor* [1990] 2 SLR(R) 361 at [14]. The second was that there was public interest in incentivising offenders to come forward and report crimes that they have committed: see *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR 611 at [21]. In the context of NS defaulters, the public interest in encouraging them to voluntarily surrender had an additional facet, which was that NS defaulters who surrender early enough would still be able to serve their NS obligations.

78 In *JBC*, the Judge took the view that a voluntary surrender later in the day should be accorded more mitigating weight as opposed to a surrender very early in the day, since the longer the period of default, the less the NS defaulter would be incentivised to return to Singapore and voluntarily surrender (see [36] above). With respect, we were unable to agree with this, and indeed found the logic a little strange. It seemed to have created a perverse incentive for NS defaulters to delay their return to Singapore to resolve their offences. In our view, as a general rule, the mitigating value of a voluntary surrender would, in

the context of the Act, decrease with the length of the period of default. This was because an early surrender would be more indicative of genuine remorse on the part of the offender (*Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [74]), and in the specific context of sentencing NS defaulters, there was also public interest in encouraging them to come forward as early as possible so that they could still discharge their NS obligations.

79 Before us, the Prosecution advanced a number of arguments explaining why, in the sentencing of NS defaulters, the mitigating weight to be attached to voluntary surrender must be attenuated:

(a) Awarding an NS defaulter a significant discount for his subsequent surrender would be inconsistent with the principles of universality and equity which required all male Singaporeans to serve NS when notice was given and not at a time of their choosing. It would also undermine the key sentencing objective of general deterrence.

(b) Overseas defaulters placed themselves in a situation where they could not be arrested, *ie*, by remaining outside jurisdiction. In this regard, it was trite law that difficulty in apprehending a particular type of offender was an aggravating factor which may warrant a deterrent sentence: *Law Aik Meng v Public Prosecutor* [2007] 2 SLR (R) 814 at [25(d)].

(c) It was unlikely that an NS defaulter's voluntary surrender would be borne out of genuine remorse. Overseas defaulters who gamed the system and placed personal pursuits ahead of their NS obligations were likely to have planned to return eventually, after they have fulfilled their personal goals, such as after the completion of their studies or after a

> stint working abroad. In other cases, an overseas defaulter may have no choice but to return because his legal status in a foreign country is in jeopardy (for example, on expiration of a visa). Alternatively, he may want to return to Singapore because of family ties or for professional reasons. In such cases, their voluntary surrender would be merely tactical, rather than arising from any genuine remorse.

80 That said, however, some mitigating weight might be given when NS defaulters voluntarily surrender, so as to provide an incentive for them to come forward to resolve their offences: see *Public Prosecutor v Vijayan s/o Ayasamy* [2010] SGDC 460 ("*Vijayan*") at [14]. The significance of a voluntary surrender in the sentencing process was necessarily fact-specific and must be determined based on the circumstances of each case, but this would in most cases be quite limited, for the reasons set out by the Prosecution (see [79] above) which we found persuasive.

Whether the NS defaulter pleaded guilty or claimed trial

81 *In JBC*, the Judge held that an NS defaulter who pleaded guilty should receive a sentencing discount of about one-quarter (see [37] above). We could not accept such an absolute rule because, in our view, the mitigating value to be accorded to a plea of guilt must necessarily be fact-specific. In the recent decision of *Chang Kar Meng v Public Prosecutor* [2017] SGCA 22, the Court of Appeal held at [46] and [71]) that:

> 46 It is well established that "[a] plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice" (see *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [77]). However, *where the evidence against the accused person is overwhelming, a guilty plea may have no mitigating value* (see *Fu Foo Tong and others*

> *v Public Prosecutor* [1995] 1 SLR(R) 1at [12]). Thus, the mitigating value of a guilty plea will depend on both the accused person's intentions in pleading guilty as well as the positive consequences that the guilty plea would have in relation to the administration of justice and also the victim. This too will often turn on the inferences that may properly be drawn from the surrounding circumstances. For example, *the principle that the guilty plea of an offender who has been caught red-handed should not be given credit may be explained on the ground that such an offender, in choosing not to contest the charges, has likely been motivated by reality rather than by remorse.*
>
> …
>
> 71 *…First, as we have already noted, whether, and if so, what discount should be accorded to an accused person who pleads guilty is a fact-sensitive matter that depends, among other things, on whether the guilty plea is motivated by sincere remorse. Second, in cases that are especially grave and heinous, the sentencing considerations of retribution, general deterrence and the protection of the public will inevitably assume great importance, and these cannot be significantly displaced merely because the accused has decided to plead guilty…*
>
> [Emphasis added]

82 In our judgment, in the context of sentencing NS defaulters, a plea of guilt would, in most cases, attract either very limited or no mitigating value at all. The elements of a default in NS obligations, whether travelling or remaining overseas without a VEP, or failing to report for NS registration, could be easily proved by the Prosecution and would be difficult for a defendant to dispute. Hence, it could be said that a person accused of defaulting on his NS obligations would, in reality, have very little choice but to plead guilty to the charges in the face of undisputed evidence against him, such that his plea of guilt should not be said to have been motivated by sincere remorse. Further, the key objective of general deterrence in sentencing NS defaulters meant that any mitigating weight to be attached to an NS defaulter's voluntary surrender must be attenuated.

83 The Prosecution submitted, and we agreed, that the mitigating value of an NS defaulter's plea of guilt and voluntary surrender should be considered holistically, with a single discount being applied. This was because there was considerable overlap in their mitigating value - both were mitigating insofar as they reveal contrition on the NS defaulter's part. Treating them as distinct mitigating factors would present a real risk of double-counting and excessive weight being placed on them. In our view, this approach of considering a plea of guilty and voluntary surrender holistically with the application of a single discount should be taken in cases involving NS defaulters who voluntarily surrendered and then pleaded guilty. We expected that cases where an NS defaulter voluntarily surrendered but then claimed trial would be exceptionally few, but such cases might, depending on the specific facts, suggest a change of mind on the part of the NS defaulter to face punishment for what he had done, such that little significance could be attached to his initial act of surrendering voluntarily as indicating genuine remorse. In cases where an NS defaulter was arrested but subsequently pleaded guilty, we were of the view that, generally speaking, the plea of guilty should, for the reasons alluded to at [82], have little mitigating value.

Other considerations

84 The discussion on the various factors set out above was not intended to exhaustively lay down the kinds of considerations that a sentencing court may take into consideration in passing a sentence on an NS defaulter. We reiterated that in determining the appropriate sentence to be meted out in each case, the sentencing court should take into account all the circumstances of the case.

85 In appropriate cases, there could be other factors that might be relevant in the sentencing process. The presence of psychiatric conditions that could

have a causal link to an NS defaulter's act of default might, for instance, be relevant. *Vijayan* was a case in point. In that case, the NS defaulter was 19 years old when he was caught and convicted for failing to comply with an enlistment notice and was sentenced to six months' imprisonment. Upon his release, he continued to avoid his NS obligations and only surrendered to CMPB 17 years later, when he was 37 years old. He was then assessed by a psychiatrist to have phobia for the army, paranoid personality and suicidal thoughts. The district judge disagreed with the Prosecution that the maximum sentence of 36 months' imprisonment was warranted in that case. He was of the view that, although a repeat NS defaulter might ordinarily have received a higher sentence than 18 months' imprisonment, the psychiatric condition of the NS defaulter in that case and the fact that he voluntarily surrendered to the CMPB were mitigating factors that warranted the reduction of the sentence to 15 months' imprisonment.

Sentencing benchmarks

86 For the reasons set out above, we were unable to adopt the sentencing curves set out in *JBC* (reproduced at [40] above). They were premised upon propositions, such as that based on the "fair share argument" that there should be a decrease in the culpability of an NS defaulter who had been away from Singapore longer, and that any mitigating value to be accorded to an NS defaulter's voluntary surrender would increase with the length of the period of default, which we were unable to accept.

87 In the result, we held that, as a general rule, the length of the period of default would be the key consideration in the determination of the appropriate sentence for an NS defaulter, although all the circumstances surrounding the commission of the offence should also be taken into account (see [57]) above. In our judgment, the following sentencing benchmarks or pegs, based on the

length of the period of default, would provide appropriate starting points for a sentencing judge in determining the sentence for an NS defaulter:

Peg	**Length of Period of Default**	**Starting Point for Sentence (Imprisonment Term)**
1	2 to 6 years	2 to 4 months
2	7 to 10 years	5 to 8 months
3	11 to 16 years	14 to 22 months
4	17 to 23 (or more) years	24 to 36 months

Table 1: Sentencing benchmarks for NS defaulters

88 Within Peg 1, the starting point sentence was to increase by half a month with each additional year of default. Hence, while a custodial sentence of two months would be the starting point for determining the appropriate sentence for an NS defaulter who had defaulted on his NS obligations for a period exceeding two years, the starting point would increase to two-and-a-half months' imprisonment when the period of default was three years, to three months' imprisonment when the period of default was four years, and so forth. Within Peg 2, the starting point sentence was to increase by one month for each additional year of default, whereas for Peg 3, the increase would be by one-and-a-half months for each additional year of default. Finally, within Peg 4, the starting point sentence would be increased by two months for each additional year of default. As we have stated at [66] above, the sentence to be meted out to an NS defaulter would not increase linearly with the length of his period of default but the rate of increase in the sentence would be amplified with longer periods of default, to reflect the decline in a person's physical fitness with age and to create a progressive disincentive for NS defaulters to delay their return to resolve their offences.

89 From Peg 1 of Table 1, the custodial threshold would be crossed when the length of the period of default crosses the two-year mark. The reasons for

setting the custodial threshold as such have been stated at [61] above. Based on Peg 4 of Table 1, the statutory maximum punishment of 36 months' imprisonment would apply as the starting point in the sentencing of an NS defaulter whose period of default was 23 years or longer. An NS defaulter who had defaulted for such a lengthy period of time would have evaded the whole of his NS obligations. The reasons for imposing the statutory maximum punishment as the starting point in the sentencing of such an offender have been set out at [62]-[65] above.

90 There is in Table 1 a spike in the sentencing starting point when the period of default crosses from the 10th year to the 11th year mark. This is because, as stated at [66] above, an NS defaulter who returns after more than 10 years of default would unlikely be able to serve his post-ORD reservist obligations in full before he reaches the statutory age of 40[7].

91 While Table 1 provides the starting points in the sentencing process, a sentencing judge should then consider all the circumstances, including the relevant aggravating and mitigating factors (some of which have been discussed above), in arriving at the appropriate sentence in each case. The sentence to be meted out in each case must be decided on its specific facts. The benchmarks that we have laid out were meant to assist and guide sentencing judges in the exercise of their sentencing discretion, and not intended for slavish adherence. The following passage by VK Rajah J in *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24] was apposite:

> The circumstances of each case are of paramount importance in determining the appropriate sentence. Benchmarks and/or tariffs (these terms are used interchangeably in this judgment)

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[7] Prosecution's Submissions at [34].

> have significance, standing and value as judicial tools so as to help achieve a certain degree of consistency and rationality in our sentencing practices. They provide the vital frame of reference upon which rational and consistent sentencing decisions can be based. They ought not, however, to be applied rigidly or religiously. No two cases can or will ever be completely identical or symmetrical. The lower courts, while obliged to pay careful and thoughtful attention to tariffs and/or sentencing precedents, must not place them on an altar and obsessively worship them. The judicial prerogative to depart in a reasoned and measured manner from sentencing and precedent guidelines in appropriate cases should not be lightly shrugged off. Sentencing is neither a science nor an administrative exercise. Sentences cannot be determined with mathematical certainty. Nor should they be arbitrary. The sentence must fit the crime. Every sentence reflects a complex amalgam of numerous and various factors and imponderables and requires the very careful evaluation of matters such as public interest, the nature and circumstances of the offence and the identity of the offender. Most crucially, it calls for the embodiment of individualised justice. This in turn warrants the application of sound discretion. General benchmarks, while highly significant, should not by their very definition be viewed as binding or fossilised judicial rules, inducing a mechanical application.

Our decisions for the present appeals

92 We turn now to the present appeals against sentence that were before us.

MA 9259

93 The length of Sakthikanesh's period of default was about five years and six months. Based on Table 1, the starting point in the determination of his sentence, based on the length of his period of default, would be around 14 weeks' imprisonment. Having regard to the fact that he had voluntarily surrendered and pleaded guilty, we decided that an imprisonment term of 10 weeks was the appropriate sentence in his case. There were no other mitigating or aggravating circumstances in his case, which was clearly distinguishable

from that of *Seow Wei Sin* where the NS defaulter likely did not know that he had failed to comply with his NS obligations.

MA 9260

94 As for Vandana, the length of his period of default was about three years and four months. Based on Table 1, the starting point in the determination of his sentence, based on the length of his period of default, would be around 10 weeks' imprisonment. Having regard to the fact that he had voluntarily surrendered and pleaded guilty, we decided that the imprisonment term of seven weeks was the appropriate sentence in his case. The circumstances under which he had committed the offence were broadly similar to those of his brother Sakthikanesh. There were no other mitigating or aggravating circumstances applicable in his case.

MA 9312

95 For Ang who evaded his NS obligations for a total period of 23.5 years, the sentencing starting point in the determination of his aggregate sentence was the statutory maximum punishment of 36 months' imprisonment. The district judge in his case did not adopt that as the sentencing point because she was of the view that to attract the maximum punishment, the NS defaulter must not only have defaulted from his NS obligations for so long that he had successfully evaded the whole of his NS obligations, but he would also need to have NS-related antecedents as well (see [26] above). The district judge erred in this respect since, as we have stated at [63], the maximum sentence might be imposed so long as a particular case fell within the range of conduct which could be characterised as the most serious instances of the offence, and there was no

need for the court to be convinced that the case was the "worst case imaginable".

96 There was little in Ang's circumstances to commend him, save for the fact that he had voluntarily surrendered and pleaded guilty. The Prosecution submitted that little mitigating value should be accorded to Ang's voluntary surrender and plea of guilt, and that his sentence should not, in any case, be less than 30 months' imprisonment. This was because Ang's voluntary surrender and plea of guilt was a calculated one and should not be taken as indicating any genuine remorse.

97 The chronology of events, as set out at [16]-[17] above, did suggest that Ang might have deliberately timed his return to Singapore so that he would not have to serve any of his NS obligations. Ang had expressed his desire to return to Singapore as early as in 2009 when he was 35 years old. He attempted to negotiate with the CMPB then on whether he could resolve his NS offences by paying "reasonable fines", or if he could contribute to Singapore in other ways instead of serving NS. He backed off when he realised that his proposals might not be considered favourably by the CMPB, and established contact with the CMPB again only in 2013, when it was just about a month away from his 40th birthday, to indicate again that he wished to return. He eventually returned when he was 41 years old.

98 Nevertheless, some credit should still be given to Ang's voluntary surrender and plea of guilt, as that at least signified that he was willing to return to accept punishment, although the credit given must necessarily be reduced in light of our observations above expressing doubts that he was truly remorseful.

We therefore deducted three months from the sentencing starting point of 36 months' imprisonment, leaving a term of 33 months' imprisonment.

Conclusion

99 For the reasons above, we allowed the Prosecution's appeals in MAs 9259, 9260 and 9312. The sentences meted out by the courts below were manifestly inadequate.

100 For MA 9259, we substituted Sakthikanesh's original sentence of three weeks' imprisonment with a sentence of 10 weeks' imprisonment. Since, at the time of the hearing of the appeal, Sakthikanesh had already served out the whole of his original sentence, we held that he was to be given credit to the full extent of time that he had already served.

101 For MA 9260, we set aside Vandana's original sentence of a fine of $6,000 and substituted that with an imprisonment term of seven weeks. The amount that he had already paid in satisfaction of the fine was to be fully refunded to him.

102 Finally, for MA 9312, two charges were brought against Ang. We apportioned the aggregate sentence of 33 months' imprisonment as follows: a term of 18 months for the first charge which was for a default period of just under 16 years, and a term of 15 months for the second charge which was for a period of default of seven and a half years following the initial term of 16 years. These were to run consecutively. We apportioned the sentences in this way just for convenience and not following the benchmarks we had laid down. The real point was that Ang had defaulted in the aggregate for more than 23 years, and

hence attracted an aggregate term that was near the high end of the sentencing range.

103 In closing, we express again our deep appreciation to Mr Gaw, the *amicus curiae*, for his helpful submissions.

Sundaresh Menon	Chao Hick Tin	See Kee Oon
Chief Justice	Judge of Appeal	Judge

Kwek Mean Luck, S.C., Kow Keng Siong, Kumaresan Gohulabalan Randeep Singh Koonar, Ho Lian-Yi and Lu Yiwei (Attorney-General's Chambers) for the appellants in all three appeals and the applicant in CM 13/2017;
Tan Jee Ming and Selvarajan Balamurugan (Straits Law Practice LLC) for the respondents in MA 9259/2016, MA 9260/2016 and CM 13/2017;
Kesavan Nair and Lam Pak Nian (Genesis Law Corporation) for the respondent in MA 9312/2016;
Daniel Gaw (Rajah and Tann Singapore LLP) as *amicus curiae*.