IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 202

Magistrate's Appeal No 9366 of 2017

Between

A KARTHIK

… Appellant

And

PUBLIC PROSECUTOR

… Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles] — [Delay in prosecution]

[Criminal Procedure and Sentencing] — [Sentencing] — [Young offenders] — [Probation]

Version No 2: 27 Oct 2020 (22:41 hrs)

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A Karthik
v
Public Prosecutor

[2018] SGHC 202

High Court — Magistrate's Appeal No 9366 of 2017
Sundaresh Menon CJ
3 April; 5 July 2018

13 September 2018

Sundaresh Menon CJ:

Introduction

1 The appellant, A Karthik ("the Appellant"), a 23-year-old male Singaporean, pleaded guilty in the court below to one charge under s 420 read with s 116 of the Penal Code (Cap 224, 2008 Rev Ed) of abetting, by conspiracy, the cheating of a motor insurance company, and consented to a similar charge of abetting, by conspiracy, the cheating of another motor insurance company being taken into consideration for sentencing purposes. The district judge ("the District Judge") sentenced him to four months' imprisonment. Dissatisfied with the decision, the Appellant appealed against the sentence imposed.

2 After hearing the parties on 3 April 2018, I adjourned the proceedings to obtain a probation pre-sentencing report in respect of the Appellant. In a

report prepared by the investigating probation officer, Ms Ho Li Ling ("Ms Ho"), dated 7 May 2018 ("the Report"), the Appellant was assessed to be suitable for probation. On 5 July 2018, having considered the contents of the Report and further submissions from the parties, I concluded that probation was the most appropriate sentence to impose on the Appellant, subject to the accompanying conditions recommended in the Report. I therefore allowed the appeal and ordered the Appellant to be placed on 24 months' supervised probation with effect from 5 July 2018, subject to: (a) a daily time restriction from 11pm to 6am; (b) a requirement that the Appellant undertake 200 hours of community service; and (c) a requirement that the Appellant's mother be bonded in the sum of $5,000 to ensure his good behaviour throughout the 24-month term of probation.

3 In general, offenders aged 21 or below are treated as youthful offenders for the purposes of sentencing. A particular aspect of this appeal was the fact that although the Appellant was 22 years old at the time he was sentenced on 20 November 2017 in the court below, he was only 17 years old at the time he committed the offences in question in June 2012. This presented an anterior question that had to be considered before deciding on the substantive issues in the appeal: should an offender who is aged 21 or below at the time of his offending conduct, but who is older than 21 when he is sentenced, be considered a youthful offender for sentencing purposes? Against that background, as I indicated I would do when allowing the appeal, I now set out the detailed reasons for my decision.

Background

4 The Appellant is currently in National Service. In June 2012, at the time of his offences, he was 17 years old and a student at the Institute of Technical

Version No 2: 27 Oct 2020 (22:41 hrs)

Education College East Simei. Sometime prior to that, he had completed a 21-month term of probation for committing robbery with common intention, an offence under s 392 read with s 34 of the Penal Code. That term of probation commenced on 19 January 2010 and ended in October 2011.

The commission of the offences

5 In early June 2012, one Sollihin bin Anhar ("Sollihin") hatched a plan to stage a traffic accident at a deserted spot along Portsdown Road. To this end, Sollihin instructed one Rahmat bin Mohd ("Rahmat") to create a chain collision involving three vehicles (which I shall refer to as "V1", "V2" and "V3"). Rahmat drove V2 to an area at Portsdown Road, one Mohamed Rashidi bin Mohamed Noor ("Rashidi") drove V3 to the same place, while two unknown Indian males drove V1 there. Rahmat then positioned V1 in front of V2, which in turn was positioned in front of V3, and engineered bumper-to-bumper collisions between the rear of V1 and the front of V2, as well as between the rear of V2 and the front of V3.

6 On 5 June 2012, one Suresh s/o Krishnan ("Suresh") asked his cousin, Krishna Kumar s/o Rajagopal ("Krishna"), to go for a medical examination at a clinic in order to obtain a medical certificate ("MC") from the doctor at the clinic. Upon obtaining the MC, Krishna was to hand it over to Suresh. Suresh also asked Krishna to recruit one more person to do likewise. Krishna accordingly approached the Appellant, who was his schoolmate at that time, to accompany him to a clinic and also to obtain an MC. The Appellant agreed.

7 Further to these arrangements, Suresh and one Noel Antney Kypas ("Noel") picked Krishna and the Appellant up from school and proceeded to the Central Medical Group ("CMG") clinic to see a doctor. Suresh instructed Noel, Krishna and the Appellant that they should each inform the doctor at the clinic

Version No 2: 27 Oct 2020 (22:41 hrs)

that they had been involved in a traffic accident and had suffered injuries, specifically, back pain, as a result. Suresh told the Appellant that he should say that at the time of the accident, Noel had been the driver of V1, Krishna had been the front passenger, and he (the Appellant) had been the rear passenger, even though none of them had in fact been in V1 or in any collision involving it. At the clinic, the Appellant duly informed the doctor that he had been a rear passenger of V1, had been involved in a traffic accident, and had injured his back as a result of the accident. The Appellant received a three-day MC from the doctor.

8 Sometime in June 2012, the Appellant was brought to a law firm, JusEquity Law Corporation ("JusEquity"), to file a personal injury claim against a motor insurance company, China Taiping Insurance (Singapore) Ltd ("CTI"), in its capacity as the insurer for V3, and to engage JusEquity to act on his behalf. JusEquity sent a letter of demand to CTI, demanding payment of $5,370.50 for personal injury caused by the purported negligent driving of Rashidi on 4 June 2012. JusEquity enclosed the following supporting documents with the letter of demand: (a) a Singapore Accident Statement ("SAS") dated 5 June 2012 made by Noel; (b) the Appellant's MC dated 5 June 2012; (c) the Appellant's medical report from CMG; and (d) a receipt for the Appellant's medical expenses issued by CMG. JusEquity also made, on behalf of the Appellant, a similar personal injury claim against another motor insurance company, Tokio Marine Insurance Singapore Ltd ("TMI"), in its capacity as the insurer for V1 and V2, demanding payment of $5,370.50 for personal injury suffered by the Appellant.

9 Neither CTI nor TMI made payment on the personal injury claims filed on the Appellant's behalf.

Version No 2: 27 Oct 2020 (22:41 hrs)

10 It was subsequently disclosed that the SAS lodged by Noel stated that a chain collision had taken place along Portsdown Road on 4 June 2012 at about 10.30pm involving: (a) for V1, Noel as the driver, Krishna as the front passenger, and the Appellant as the rear passenger; (b) for V2, one Teo Kian Hwee, Edwin as the driver, one Teo Kian Wei, Edward as the front passenger, and one Lee Kit and one Alvin Chia Han Kwang as the two rear passengers; and (c) for V3, Rashidi as the driver. For convenience, I shall hereafter refer to this alleged chain collision as "the Accident".

11 It was also subsequently disclosed that both CTI, as the insurer of V3, and TMI, as the insurer of V1 and V2, had received property damage and personal injury claims from all of the aforementioned individuals who claimed to be drivers and passengers of the respective vehicles at the time of the Accident. However, none of these persons were in fact in the vehicles in question or in any collision involving those vehicles, nor had any of them sustained any of the injuries that were the subject of the claims.

The investigations by the police and the Appellant's subsequent arrest

12 On 4 February 2013, a representative of TMI lodged a police report stating that fraudulent insurance claims had been made in respect of the Accident. The police duly commenced investigations into the allegations of motor insurance fraud, and these eventually revealed that Sollihin was the mastermind behind at least 42 staged accidents involving about 100 people.

13 In January 2015, the Appellant was contacted by the police regarding the motor insurance claims submitted in June 2012 in relation to the Accident. The Appellant initially made a statement to the police denying any involvement in the matter.

Version No 2: 27 Oct 2020 (22:41 hrs)

14 On 2 August 2016, following further investigations, the Appellant was arrested and charged with two offences under s 420 read with s 116 of the Penal Code of abetting, by conspiracy, the cheating of CTI and TMI respectively. The Appellant immediately admitted to both charges in his cautioned statements recorded pursuant to s 23(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

15 On 20 November 2017, the Appellant pleaded guilty to the charge of abetting, by conspiracy, the cheating of CTI, and consented to the charge of abetting, by conspiracy, the cheating of TMI being taken into consideration for sentencing purposes.

The decision below

16 In the court below, the Prosecution sought a sentence of at least four months' imprisonment, while the Appellant sought either a conditional discharge under s 8(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("the POA") or, alternatively, an order of probation under s 5(1) thereof: see *Public Prosecutor v A Karthik* [2017] SGDC 341 ("GD") at [12]–[13].

17 The District Judge imposed a sentence of four months' imprisonment, reasoning as follows:

> (a) General deterrence was an important consideration when sentencing motor insurance fraudsters because such offences, which involved staged accidents, were difficult to detect and investigate, and had serious implications, including substantial losses to motor insurers and, as a consequence, higher motor insurance premiums for motorists (GD at [25]).

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) There was also a need for specific deterrence in this case because the Appellant had committed his offences in June 2012, just nine months after completing the 21-month term of probation for his earlier robbery offence. This suggested that he had not been deterred or rehabilitated by the earlier term of probation. The Appellant's conduct "was no mere moment of juvenile folly" because he had lied to three different parties – the doctor at CMG when reporting his injury, the lawyers at JusEquity when making his claims for compensation from CTI and TMI, and the police during investigations – over a period of several years in order to maintain the falsehood in respect of the Accident (GD at [26]).

(c) A conditional discharge was not appropriate. First, there was no inordinate delay in prosecution. The Prosecution's explanation of the procedural history of the investigations into the fraudulent scheme which the Appellant was party to and the subsequent bringing of the charges against him was valid. It was improper to speculate with hindsight, or to infer from the statement of facts involving the prosecutions of the other persons involved in the fraudulent scheme, when and how the investigations and the prosecution should have proceeded in respect of the Appellant. Second, the Appellant's offences were serious. Third, there was no basis to argue that the Appellant deserved a conditional discharge just because Krishna had been given a stern warning, these being matters falling within the proper ambit of prosecutorial discretion (GD at [27]–[28]).

(d) Probation was also thought not to be appropriate. The deterrent message that was called for in relation to motor insurance fraud cases would be undermined if a custodial sentence were not imposed on the Appellant, and his good behaviour during his Basic Military Training

Version No 2: 27 Oct 2020 (22:41 hrs)

was insufficient to warrant a different conclusion. Further, the fact that the Appellant had reoffended so soon after completing his previous stint of probation showed that the family support which he had was ineffective to keep him from going astray. The District Judge therefore declined to call for a probation pre-sentencing report as he did not even consider probation a viable sentencing option (GD at [28]).

(e) A sentence of four months' imprisonment was appropriate in the light of the established sentencing precedents relating to an accused person who pretended to have been a passenger in a motor insurance fraud scheme where no payment was in fact made as a result of the fraud. This sentence was also justified in view of the charge that the Appellant had consented to being taken into consideration for sentencing purposes (GD at [29]).

18 The Appellant appealed against his sentence on 4 December 2017.

The proceedings on appeal

The parties' initial submissions

19 At the hearing before me on 3 April 2018, the Appellant submitted that: (a) a conditional discharge under s 8(1) of the POA should have been granted; (b) alternatively, a probation pre-sentencing report should have been obtained before the District Judge considered imposing any sentence; and (c) further, and in the alternative, a shorter imprisonment term of three months' imprisonment should have been imposed. The Prosecution, on the other hand, maintained that imprisonment was the most appropriate sentence, and that four months' imprisonment was not manifestly excessive.

Version No 2: 27 Oct 2020 (22:41 hrs)

20 After hearing these initial submissions, I agreed with the District Judge that a conditional discharge was not appropriate. However, I also considered that the District Judge erred in failing to obtain a probation pre-sentencing report before deciding on the appropriate sentence to impose. When a court deals with the sentencing of a young or youthful offender, that is to say, an offender who is aged 21 or below, it should generally call for a probation pre-sentencing report before imposing the sentence, and should not embark on an assessment of the offender's suitability for probation without the benefit of such a report (*Wong Shan Shan v Public Prosecutor* [2008] SGHC 49 ("*Wong Shan Shan*") at [19] and [21]). The probation officer undertakes a detailed assessment of the offender's circumstances before making a recommendation as to whether or not probation is appropriate. While the court is not bound by such a recommendation, it should not lightly exclude such detailed assessment as is generally contained in a probation pre-sentencing report (see further [78]–[79] below).

21 A court may, in general, sentence a youthful offender *without* obtaining a probation pre-sentencing report if the basic prerequisites for probation to be considered are not met, or if the court is clearly satisfied that "probation is not a realistic option on the facts of the case" (*Wong Shan Shan* at [20]). Neither situation applied here: it was common ground that the basic criteria for probation were met, and I did not consider this to be a case where probation should be altogether excluded as a viable or realistic sentencing option. I therefore adjourned the proceedings and called for a probation pre-sentencing report on the Appellant.

Version No 2: 27 Oct 2020 (22:41 hrs)

The Report

22 In the Report, Ms Ho assessed the Appellant to be suitable for probation. She also recommended that the Appellant undergo 24 months of supervised probation with the following accompanying conditions: (a) a daily curfew from 11pm to 6am; (b) a requirement to undertake 200 hours of community service; and (c) a requirement for the Appellant's parents to be bonded.

23 In arriving at these recommendations, Ms Ho made two significant observations. First, she concluded that the Appellant's involvement in the present offences was evidence of his poor moral reasoning, but she also reported that his *risk of reoffending was very low*. Next, she noted that the Appellant exhibited strong protective factors, as follows:

(a) His commitment towards a goal-oriented life suggested a change in his priorities and an increased maturity.

(b) Since 2012, he had been consistently engaged in employment, and had remained crime-free throughout this period.

(c) There had been positive feedback on his overall conduct and performance during his National Service.

(d) He had made conscious efforts to spend more time with his family and dissociate himself from his anti-social peers, and had expressed a willingness to receive guidance.

(e) The strong support from his family members improved the prospects of his rehabilitation into the community.

Version No 2: 27 Oct 2020 (22:41 hrs)

24 Ms Ho therefore proposed a case management plan that was directed at: (a) creating opportunities for the Appellant to remain constructively engaged during his period of probation in order to ensure that he would not lapse back into anti-social activities; and (b) improving the Appellant's decision-making and consequential thinking in order to ensure that he would make more constructive and beneficial choices in future.

The parties' further submissions

25 When the appeal was restored for hearing on 5 July 2018 following the submission of the Report, the Appellant argued that an order of probation should be made. To this end, he contended that:

> (a) He had exhibited an extremely strong propensity for reform in the light of: (i) the strong family support which he had received and his improved relationship with his family since the time of his offences; (ii) his strong commitment towards a crime-free life, as evidenced by the fact that he had remained crime-free and had been consistently employed since 2012; (iii) his genuine remorse for his offences, as demonstrated by the fact that he had pleaded guilty at the earliest possible opportunity after realising the true severity of his actions; and (iv) the absence of any risk factors due to his voluntary dissociation from his negative peers and from alcohol abuse since 2016.
>
> (b) Probation in these circumstances remained a viable option even though: (i) the Appellant had committed the present offences not long after completing his earlier 21-month term of probation for his robbery offence; and (ii) the present offences were serious in nature.

Version No 2: 27 Oct 2020 (22:41 hrs)

(c) Further, probation had been granted to two of the co-accused persons involved in the same fraudulent scheme who, in fact, bore greater culpability.

26 The Appellant further asked to be granted a term of between 12 to 16 months' probation and an accompanying requirement of 100, instead of 200, hours of community service on the basis that it was open to the court to come to an independent assessment of the appropriate duration and conditions of probation and, in this regard, depart from the recommendations made by Ms Ho. This was said to be justified in this case because the Appellant had already demonstrated that his rehabilitation could be sustained "even with minimal formal intervention".

27 As for the Prosecution, following its consideration of the Report, it too agreed that an order of probation was suitable, but only because the exceptional facts of this case warranted primary emphasis being placed on rehabilitation rather than deterrence despite the surrounding context of motor insurance fraud.

The issues to be determined

28 In the light of the parties' further submissions after receiving the Report, the following issues arose for my consideration in this appeal:

(a) whether the Appellant should be considered a youthful offender for sentencing purposes;

(b) whether probation was the most appropriate sentence to impose in this case; and

Version No 2: 27 Oct 2020 (22:41 hrs)

(c) whether the duration and conditions of probation recommended by Ms Ho in the Report should be accepted.

My decision

29 In my judgment, the Appellant should be considered a youthful offender for sentencing purposes, and probation was the most appropriate sentence to impose in this case. I was also satisfied that the duration and conditions of probation recommended by Ms Ho in the Report should be adopted. I therefore allowed the appeal and ordered the Appellant to be placed on 24 months' supervised probation, subject to the accompanying conditions set out at [2] above.

30 I explain below the reasons for my decision on each of these points in turn.

The Appellant should be considered a youthful offender for sentencing purposes

Rehabilitation as the presumptive dominant consideration when sentencing youthful offenders

31 I commence my analysis by setting out s 5(1) of the POA, pursuant to which the court may order probation. That reads as follows:

> **Probation**
>
> **5.—**(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years:

Version No 2: 27 Oct 2020 (22:41 hrs)

> Provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order if the person —
>
> (*a*) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and
>
> (*b*) has not been previously convicted of such offence referred to in this proviso, and for this purpose section 11(1) shall not apply to any such previous conviction.

32 It is clear from the language of s 5(1) that there is no aged-based restriction as to when the court is permitted to make a probation order, so long as the offender does *not* fall within the proviso to that provision (in other words, so long as the offender is *not* convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law): *Goh Lee Yin v Public Prosecutor* [2006] 1 SLR(R) 530 ("*Goh Lee Yin*") at [26].

33 That said, the age of an offender is nonetheless a critical factor in the court's determination of whether an offender should be granted probation in lieu of imprisonment. This is because probation as a sentencing option places rehabilitation at the front and centre of the court's deliberation (*Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [35], citing *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [41]–[43]), and rehabilitation as a sentencing principle generally takes precedence when the court is dealing with youthful offenders (*Public Prosecutor v Lim Chee Yin Jordon* [2018] SGHC 46 ("*Jordon Lim*") at [30], citing *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Maurice Mok*") at [21]). Indeed, the law takes a *presumptive* view that where youthful offenders are concerned, the primary sentencing consideration is

Version No 2: 27 Oct 2020 (22:41 hrs)

rehabilitation: *Public Prosecutor v Lim Cheng Ji Alvin* [2017] 5 SLR 671 ("*Alvin Lim*") at [6], cited in *Jordon Lim* at [31].

34 In contrast, the presumption that the dominant sentencing consideration is rehabilitation does *not* apply to adult offenders, that is to say, offenders who are above the age of 21: *Alvin Lim* at [7]. Instead, rehabilitation would only be regarded as the operative consideration when sentencing adult offenders if the particular offender concerned "demonstrates an *extremely strong propensity for reform* and/or there are *exceptional circumstances warranting the grant of probation*" [emphasis added]: *Goh Lee Yin* at [28], cited in *Jordon Lim* at [33]. In short, the archetype of the appropriate candidate for probation is the young "amateur" offender (*Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 ("*Ernest Sim*") at [27], citing *Lim Li Ling v Public Prosecutor* [2007] 1 SLR(R) 165 at [87]). As against this, it is "the exception rather than the norm for adult offenders to be sentenced to probation" (*Jordon Lim* at [34]).

35 As recounted earlier, the Appellant was 17 years old when he committed the offences in question in June 2012, but by the time he was convicted and sentenced on 20 November 2017, he was 22 years old (see [3] above). In the light of the marked distinction between the presumptive treatment of offenders above the age of 21 and that of offenders at or below that age, a question arose as to whether the Appellant should be considered a youthful offender for sentencing purposes.

36 As I indicated at [29] above, I answered this question in the affirmative. My reasons for so deciding may be distilled from a closer scrutiny of the rationales underlying the presumptive view that rehabilitation should be the dominant sentencing consideration when dealing with youthful offenders.

Version No 2: 27 Oct 2020 (22:41 hrs)

The twin rationales underlying the presumptive primacy of rehabilitation in relation to youthful offenders

37 In my judgment, there are at least two primary reasons justifying the view that youthful offenders should ordinarily be sentenced on the basis of rehabilitation being the dominant sentencing consideration:

(a) First, there is the *retrospective* rationale, which seeks to justify giving a young offender a second chance by excusing his actions on the grounds of his youthful folly and inexperience. This rationale rests on the offender's age *at the time of the offence*, insofar as it emphasises his relative lack of maturity and his state of mind when he was committing the offence.

(b) Second, there is the *prospective* rationale, which seeks to justify rehabilitation as the preferred tool to discourage future offending on the grounds that: (i) young offenders would be more receptive towards a sentencing regime aimed at altering their values and guiding them on the right path; (ii) society would stand to benefit considerably from the rehabilitation of young offenders, who have many potentially productive and constructive years ahead of them; and (iii) young offenders appear to suffer disproportionately when exposed to the typical punitive options, such as imprisonment, as compared to adult offenders. These considerations rest on the offender's age *at the time of sentencing*, insofar as they emphasise his mentality and outlook at the time when he is facing the consequences of his earlier criminal conduct.

38 The distillation of these two rationales may be seen to underlie some of the existing case law in this regard. In *Maurice Mok*, Yong Pung How CJ made

Version No 2: 27 Oct 2020 (22:41 hrs)

the following oft-cited observations on the rehabilitation of youthful offenders (at [21]):

> Rehabilitation is the dominant consideration where the offender is 21 years and below. *Young offenders are in their formative years and chances of reforming them into law-abiding adults are better.* The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. *Compassion is often shown to young offenders on the assumption that the young "don't know any better" and they may not have had enough experience to realise the full consequences of their actions on themselves and on others.* Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour. However, there is no doubt that some young people can be calculating in their offences. Hence the court will need to assess the facts in every case. [emphasis added]

39 More recently, in *Alvin Lim*, I affirmed (at [6]) the principle that rehabilitation should presumptively be the primary sentencing consideration for young offenders, and explained (likewise at [6]) that:

> … [t]his, to a certain extent, is because *the chances of effective rehabilitation in the case of young offenders are thought to be greater than in the case of adults*: *Sim Wen Yi Ernest v PP* [2016] 5 SLR 207 at [27]. But that is not all: the different approach for young offenders is also justified for two other reasons at least. The first is that *the young may know no better*; some regard should therefore be had to the fact that *the limited nature and extent of their life experiences might explain their actions and justify some consideration being extended to them*. The second is that *with young offenders, society generally has an especially strong interest in their rehabilitation*; their diversion from the prison environment is therefore a desirable goal where this would enhance their prospects of rehabilitation (see *PP v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [21]). [emphasis added]

40 These passages articulate both the retrospective and the prospective rationales outlined at [37] above. On the one hand, the considerations that the young may not know any better and that they may lack the life experience necessary to appreciate the true gravity of their actions are justifications

Version No 2: 27 Oct 2020 (22:41 hrs)

stemming from the retrospective rationale. On the other hand, the observations that the chances of effectively rehabilitating young offenders are perceived to be greater than in the case of adult offenders and that society generally has an especially strong interest in the rehabilitation of young offenders are explanations that are rooted in the prospective rationale.

41 The same point may also be gleaned from the academic literature. In *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005), Professors Andreas von Hirsch and Andrew Ashworth identify three reasons why juveniles should be subject to reductions in the severity of the sentences imposed on them (at pp 36–47):

> (a) First, juveniles should be treated as less culpable than adults because: (i) they have less capacity to assess and appreciate the harmful consequences of their actions; and (ii) they will have had fewer opportunities to develop impulse control and resist peer pressure to offend.
>
> (b) Second, criminal sanctions would be more onerous when imposed on a juvenile than on an adult because a juvenile would generally be psychologically less resilient than an adult.
>
> (c) Third, juveniles should be permitted a greater degree of latitude to make mistakes, including those that might harm others. This is because adolescence is a time for experimentation, which involves weaning oneself off adult authority, learning to live autonomously, and testing one's limits.

Version No 2: 27 Oct 2020 (22:41 hrs)

While the first and third reasons suggested by Professors von Hirsch and Ashworth accord with the retrospective rationale mentioned above, the second reason accords with the prospective rationale.

42 In a similar vein, in the keynote address that I delivered at the Singapore Academy of Law Sentencing Conference 2017 on 26 October 2017 (which was cited in *Public Prosecutor v ASR* [2018] SGHC 94 ("*ASR*") at [108]–[109]), drawing from the scholarship of, among others, Professor Lucia Zedner in "Sentencing Young Offenders" in *Fundamentals of Sentencing Theory* (Andrew Ashworth & Martin Wasik eds) (Clarendon Press Oxford, 1998) ch 7 at pp 168 and 174, I identified four reasons why rehabilitation should generally be the paramount sentencing consideration when dealing with young offenders (at paras 17–21):

> (a) First, young offenders lack developed powers of reasoning and may therefore be unable to fully appreciate the consequences of their actions. They should thus be viewed as being less culpable than offenders who are able to reason with the full capacity and maturity that comes with adulthood.
>
> (b) Second, the prospects of effective rehabilitation are likely to be enhanced where young offenders are concerned.
>
> (c) Third, placing young offenders in the traditional prison environment is likely to achieve the opposite effect from what is intended because custodial institutions can prove to be fertile sources of contamination, exposing young offenders to the adverse moral influence and expertise of older offenders, who are likely to be more recalcitrant and refractory than themselves.

Version No 2: 27 Oct 2020 (22:41 hrs)

(d) Fourth, society has a tremendous interest in rehabilitating young offenders, given that their youth imparts not only the capacity for change but also the immense potential benefit of many subsequent years of valuable contribution to society.

While the first reason identified in the keynote address accords with the retrospective rationale, the remaining reasons are aligned with the prospective rationale.

43 As with any classification based on chronological age, there can be a sense of arbitrariness, particularly when dealing with offenders at the margins of the threshold age of 21. But in the absence of any other considerations that might affect the court's analysis, this remains a workable guide, subject to at least the following two observations:

(a) First, as noted by Yong CJ in *Maurice Mok* at [21] (see [38] above), it remains necessary to examine the attendant facts in every case, including the particular circumstances of the offender and the offence.

(b) Second, the foregoing guide is of course subject to any express statutory limitation that lawfully constrains the court's powers.

44 Subject to these two observations, the twin rationales identified at [37] above may be relevant in considering the sentencing approaches to be taken for offenders on either side of the threshold age. If an offender is 21 years old or below at both the time of the offence and the time of sentencing, *both* the retrospective and the prospective rationales would apply. The law therefore rightly takes the presumptive view that the primary sentencing consideration in such cases will generally be rehabilitation (see [33] above). Conversely, if an offender is above the age of 21 at both the time of the offence and the time of

Version No 2: 27 Oct 2020 (22:41 hrs)

sentencing, *neither* rationale would apply. In this regard, the law rightly takes the view that rehabilitation would typically *not* be the operative concern for such an offender *unless* the particular offender concerned happens to demonstrate an extremely strong propensity for reform or there exist other exceptional circumstances (see [34] above).

45 Then there are those offenders who are at or below the threshold age of 21 at the time of the offence but above that age by the time of sentencing. The prospective rationale would *not* apply to such an offender as strongly, if at all, while the retrospective rationale would continue to be relevant.

Rationalising the treatment of the Appellant as a youthful offender

46 Should the Appellant be considered a youthful offender even if (as outlined at [45] above) only the retrospective but not the prospective rationale applies? In my judgment, as a matter of principle, this depends on all the circumstances, but it should not be ruled out for several reasons.

47 First, as I have already noted at [45] above, there is nothing to displace the continuing relevance of the retrospective rationale to offenders who are aged 21 or below at the time of the offence but above that age by the time of sentencing. It does not appear from the authorities canvassed earlier at [38]–[42] above that the prospective rationale is considered more important than the retrospective rationale. Indeed, insofar as culpability is frequently viewed as among the most important indicia of the gravity of an offender's criminal conduct and, hence, of the sort of punitive response that is called for (see, for instance, *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [35] and *Public Prosecutor v Lim Yee Hua and another appeal* [2018] 3 SLR 1106 at [27]), the retrospective rationale may be seen as remaining a very important justification.

Version No 2: 27 Oct 2020 (22:41 hrs)

48 Second, there is some force in the argument that even an older offender might be well-placed to respond meaningfully to a rehabilitative sentencing regime such as probation. Indeed, rehabilitative sentencing might in fact be more suitable for an offender who committed an offence with the reduced culpability of youth, but who is older by the time of his sentencing, as he might have become mature enough to appreciate the significance of the rehabilitative sanction that is being meted out to him As See Kee Oon JC (as he then was) noted in *Ernest Sim* (at [28]):

> … [O]lder offenders may in fact be more receptive to probation as they are generally more mature and better able to understand their responsibilities, the consequences of breaching probation, and the significance of being afforded a chance for reform. …

49 Third, there is the fact that there was in this case a substantial lapse of time between the Appellant's commission of his offences and the subsequent imposition of the sentence by the District Judge. As I have already mentioned, the Appellant committed his offences in June 2012, but was sentenced *more than five years later* on 20 November 2017. In my judgment, such a delay might be relevant either:

(a) where it can be shown that there was undue delay that prejudiced the offender, thereby warranting the imposition of a more lenient sentence as a matter of fairness to the offender; or

(b) where it affords the court the opportunity to gauge how the offender has progressed in his rehabilitation in the intervening period, given that this trajectory can be extremely pertinent to the court's assessment of what is the most appropriate sentence to impose in the circumstances.

Version No 2: 27 Oct 2020 (22:41 hrs)

50 This approach is neither novel nor unprecedented. In *Tan Kiang Kwang v Public Prosecutor* [1995] 3 SLR(R) 746 ("*Tan Kiang Kwang*"), Yong CJ held that where there has been a significant delay in prosecution, the court may exercise its discretion to "discount" the sentence if this is appropriate in order to avoid real injustice or prejudice to the accused. Yong CJ identified two main justifications for this (at [20]):

> … Firstly, the accused may have to suffer the stress and uncertainty of having the matter hanging over his head for an unduly long or indefinite period. … Secondly, if there is evidence that the accused has changed for the better between the commission of the offence and the date of sentence, the court may also properly take this into account in appropriate circumstances. …

51 In *Chan Kum Hong Randy v Public Prosecutor* [2008] 2 SLR(R) 1019 ("*Randy Chan*"), V K Rajah JA cited *Tan Kiang Kwang* with approval (at [21]), and similarly distilled two main reasons for considering whether to extend leniency in sentencing to an offender on account of a significant delay in prosecution. First, there is the need to avoid any unfairness to the offender arising as a result of the matter having been held in abeyance for some time, thereby causing him "undue agony, suspense and uncertainty" (at [23]). And second, there is the desire to avoid effectively undermining the offender's rehabilitation and reintegration into society by undoing whatever positive progress he might have painstakingly achieved during the period of delay (at [26]).

52 It is the second rationale articulated in *Tan Kiang Kwang* and *Randy Chan* – namely, not undermining whatever rehabilitative progress the offender might have made between the time of his offence and the time of his eventual sentencing – which is pertinent for the purposes of the present appeal. In *Randy Chan*, Rajah JA elaborated on this rationale as follows (at [27]–[29]):

Version No 2: 27 Oct 2020 (22:41 hrs)

> 27 ***The lapse of time between the commission of an offence and the imposition of an unjustifiably-delayed subsequent sentence takes on particular significance when the rehabilitative goal of punishment appears to have been met***. This proposition finds considerable support in, *inter alia*, Australia, as illustrated by the following cases.
>
> 28 In *Duncan v R* (1983) 47 ALR 746, the Court of Criminal Appeal of the Supreme Court of Western Australia held (at 749) that:
>
> > [W]here, prior to sentence, there has been a lengthy process of rehabilitation and the evidence does not indicate a need to protect society from the [offender], the punitive and deterrent aspects of the sentencing process should not be allowed to prevail so as to possibly destroy the results of that rehabilitation.
>
> … Similar observations were articulated in *The Queen v Lyndon Cockerell* [2001] VSCA 239 (*per* Chernov JA at [10]), as follows:
>
> > … [W]here there has been a relatively lengthy process of rehabilitation since the offending, being a process in which the community has a vested interest, the sentence should not jeopardise the continued development of this process but should be tailored to ensure as much as possible that the offender has the opportunity to complete the process of rehabilitation.
>
> 29 In cases involving an inordinate delay between the commission of an offence and the ultimate disposition of that offence via the criminal justice process, the element of rehabilitation underway during the interim cannot be lightly dismissed or cursorily overlooked. ***If the rehabilitation of the offender has progressed positively since his commission of the offence and there appears to be a real prospect that he may, with time, be fully rehabilitated, this is a vital factor that must be given due weight and properly reflected in the sentence which is ultimately imposed on him.*** Indeed, in appropriate cases, this might warrant a sentence that might otherwise be viewed as "a quite undue degree of leniency" (*per* Street CJ in *R v Todd* [[1982] 2 NSWLR 517] at 520).
>
> [original emphasis omitted; emphasis added in bold italics]

53 It can be seen from the case law that the second rationale stated in *Tan Kiang Kwang* and *Randy Chan* has been invoked to justify the imposition of shorter terms of incarceration on offenders following a significant delay in

Version No 2: 27 Oct 2020 (22:41 hrs)

prosecution. In *Ang Zhu Ci Joshua v Public Prosecutor* [2016] 4 SLR 1059 ("*Joshua Ang*"), for example, Chao Hick Tin JA noted the offender's "exceptional rehabilitation" in the two years since he was apprehended such that by the time his appeal against sentence was heard, he posed "little or no risk of reoffending" (at [4]–[5] and [7]). Citing the views expressed in *Tan Kiang Kwang* and *Randy Chan* (at [7]), Chao JA decided to order only two (instead of three) of the 12-week sentences imposed on the offender to run consecutively, observing (at [8]):

> … *[T]oo long a period of incarceration has the potential to undo all the progress the [a]ppellant has achieved thus far.* A global sentence of 24 weeks' imprisonment appropriately balances the invariably competing sentencing principles of deterrence and retribution, and rehabilitation. I also emphasise that it is in the public's interest that an accused's risk of recidivism is kept at bay. [emphasis added]

54 In *ASR*, Woo Bih Li J took the same approach as that of Chao JA in *Joshua Ang*. In declining to sentence the offender – who was 14 at the time he committed his offences but 16 by the time of his conviction – to the lengthy period of imprisonment sought by the Prosecution, and preferring instead to impose reformative training, Woo J similarly placed particular emphasis on the concern that a long period of incarceration "would undo the progress that the Accused had achieved" in the intervening period (at [173]–[174]).

55 As I see it, in both *Joshua Ang* and *ASR*, the court was *not* relying on the delay in prosecution as a basis for imposing a more lenient sentence on the offender as a matter of fairness to the offender (which is the approach set out at [49(a)] above); rather, the court was using the opportunity presented by that delay to assess how the offender had progressed in his rehabilitation between the time of the offences concerned and the time of sentencing so as to determine the most appropriate sentence to impose (which is the approach set out at [49(b)]

Version No 2: 27 Oct 2020 (22:41 hrs)

above). I saw no reason why the latter approach, which rests on the second rationale articulated in *Tan Kiang Kwang* and *Randy Chan*, could not also be applied in the present appeal to the analysis of whether the Appellant should be regarded as a youthful offender, with the consequence that rehabilitation should presumptively be the key sentencing consideration even though the Appellant was already above the age of 21 by the time of his sentencing. I emphasise here that I was *not* relying on any inordinate delay in prosecution that might have prejudiced the Appellant to impose a more lenient sentence on him as a matter of fairness to him. Instead, I was using the opportunity afforded by the delay in prosecution to examine the evidence of the Appellant's rehabilitative progress between the time of his offences and the time of his sentencing so as to determine whether it would be appropriate, on the particular facts of this case, to maintain the focus on rehabilitation as the key sentencing consideration.

56 I did not consider it material in this context that the Appellant had lied to the police when he was first brought in for questioning in January 2015 (see [13] above). It was suggested that this might have contributed to the delay in prosecution in this case. In this regard, it has been held that an offender should generally not be permitted to rely on an inordinate delay in prosecution to seek a lighter sentence if he had in any way been responsible for the delay. Yong CJ cautioned in *Tan Kiang Kwang* that "where the accused has actively misled the police in the course of the investigations, he cannot complain of the delay in prosecution, much less seek to extract some mitigating force from it" (at [20]). Rajah JA echoed this sentiment in *Randy Chan*, noting (at [33]–[34]):

> 33 In cases where the delay is attributable to the offender's own misconduct (*eg*, where the offender has evaded detection, destroyed evidence, actively misled the police or been less than forthcoming to the investigating authorities), the offender cannot complain of the delay in prosecution, much less seek to opportunistically extract some mitigating credit from it. To

Version No 2: 27 Oct 2020 (22:41 hrs)

> allow the offender in such a scenario any discount in sentencing would be contrary to all notions of justice. …
>
> 34 It is therefore clear both as a matter of principle and common sense that the courts should not afford any leniency to offenders who are responsible for delaying justice or preventing justice from taking its course either by concealing the truth or by obstructing investigations. This would be tantamount to allowing the offender to profit from his own wrongdoing.

57 In my view, where an offender is responsible for the delay in prosecution, although he cannot rely on such delay to seek a lighter sentence, this does not preclude the court from taking into account any rehabilitative progress which he might have made during the period of the delay for the purposes of determining the appropriate sentence to impose. This was precisely the approach which I took in this appeal. As I stated at [55] above, I did *not* rely on the delay in prosecution in this case as a basis for imposing a lighter sentence on the Appellant as a matter of fairness to him. Rather, I made use of the opportunity presented by that delay to assess the progress that the Appellant had achieved in his rehabilitation since the commission of his offences and, in turn, determine whether he should be treated as a youthful offender such that rehabilitation should presumptively remain the principal sentencing consideration. In this case, it indeed seemed appropriate to do so because, as noted at [23] above, the Report painted a picture of a young man who was making a concerted effort to mend his ways with the help of his family.

58 In my judgment, the appropriate approach that the court should take in relation to offenders (such as the Appellant) who are at or below the threshold age of 21 at the time of the offence but above that age by the time of sentencing is to examine all the facts of the case – including the offender's actual age at each of the two material points in time, the length of the delay between them, and the available evidence of the trajectory of the offender's rehabilitative

Version No 2: 27 Oct 2020 (22:41 hrs)

progress in the intervening period – and determine, in the light of these facts, whether it is appropriate to treat the offender as a youthful offender such that the presumption that rehabilitation is the key sentencing consideration continues to apply. In this case, for the reasons canvassed at [47]–[57] above, coupled with the fact that at the time of sentencing, the Appellant was only just slightly above the threshold age, I was amply satisfied that this question should be answered in the affirmative.

59 The approach which I have just outlined is not unprecedented. For instance, in the unreported case of *Public Prosecutor v Tan Jian Yong* District Arrest Cases Nos 2661 of 2013 and others (19 December 2013) ("*Tan Jian Yong*"), the district judge imposed a probation order in lieu of imprisonment on the accused, who was 22 years old at the time of sentencing but 21 years of age at the time of the offence. *Tan Jian Yong* was subsequently cited in *Public Prosecutor v Hong Hequn* [2015] SGDC 56 ("*Hong Hequn*") by the defence counsel as an example where probation had been imposed on an offender who was above the age of 21 at the time of sentencing. The district judge in *Hong Hequn* agreed with the treatment of the offender in *Tan Jian Yong* as a "young offender", such that "rehabilitation was a dominant factor in sentencing" (at [36]), given that that offender was 21 years old at the time of the offence, but he declined to apply the same approach to the accused before him as the latter had been above the age of 21 both at the time of the offence and at the time of sentencing (at [37]).

60 In *Public Prosecutor v Chia Shu Xuan* [2012] SGDC 369 ("*Chia Shu Xuan*"), the accused, who was aged 18 years and 11 months at the time of his offences and 22 years old at the time of his sentencing, was given a 24-month term of probation in lieu of the imprisonment term sought by the Prosecution.

Version No 2: 27 Oct 2020 (22:41 hrs)

In coming to this decision, Senior District Judge See Kee Oon (as he then was) stated as follows (at [59]):

> … I was constantly mindful of the fact that the accused was not even 19 at the time of the offences. He has just turned 22. *The lapse of time should not be held against him as he was already 21 by the time he was charged.* In my view, he was not a hardened criminal but at his relatively young age and given his emotional instability, he would be vulnerable to further negative influences from other sources if he were to be sentenced to imprisonment. That might well mark the point of no return for him. [emphasis added]

61 This approach was subsequently referred to in *Public Prosecutor v Ricky Widjaja* [2015] SGDC 201, where the learned district judge considered *Chia Shu Xuan* and agreed that it was correct in that case to apply the principle that rehabilitation was the dominant sentencing consideration given that the offender there was not even 19 years old at the time he committed his offences (at [66.1]). The district judge did not, however, apply the same approach to the accused before him as the latter was already above the age of 21 at the time of his offences.

Probation was the most appropriate sentence in this case

62 Having explained my reasons for holding that the Appellant should be considered a youthful offender for sentencing purposes in this appeal, I now turn to explain why I considered probation to be the most appropriate sentence to impose in the light of the Report prepared by Ms Ho.

The applicable principles

63 I begin by setting out the proper analytical framework for sentencing youthful offenders based on the existing case law.

Version No 2: 27 Oct 2020 (22:41 hrs)

64 The two-stage approach for sentencing youthful offenders is well established. In *Boaz Koh*, I set out this approach as follows (at [28], citing *Al-Ansari* at [77]–[78]):

> … At the first stage of the sentencing process, the task for the court is to identify and prioritise the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances including those of the offence. This will then set the parameters for the second stage of the inquiry, which is to select the appropriate sentence that would best meet those sentencing considerations and the priority that the sentencing judge has placed upon the relevant ones.

65 At the first stage, the court is concerned with the threshold question of whether rehabilitation retains its primacy in the sentencing matrix. While rehabilitation is presumptively the dominant consideration when sentencing youthful offenders, its primacy may be diminished by the circumstances of the case or even eclipsed by considerations such as deterrence or retribution. This tends to be the position where: (a) the offence is serious; (b) the harm caused is severe; (c) the offender is hardened and recalcitrant; and/or (d) the conditions which make rehabilitative sentencing options such as probation or reformative training viable do not exist (*Boaz Koh* at [30]). In respect of the last factor, Chan Seng Onn J suggested in *Muhammad Zuhairie Adely bin Zulkifli v Public Prosecutor* [2016] 4 SLR 697 ("*Zuhairie*") at [25] that whether or not the conditions which make rehabilitative sentencing options viable exist may also be affected by the other considerations noted by Rajah JA in *Al-Ansari* at [67], namely: (a) the nature of the rehabilitation best suited for the offender; (b) the availability of familial support for the offender's rehabilitative efforts; and (c) any other special reasons or need for rehabilitation.

66 This approach to the evaluation of whether there exist conditions which make rehabilitative sentencing options viable is broadly similar to the assessment undertaken by Chao JA in *Leon Russel Francis v Public Prosecutor*

Version No 2: 27 Oct 2020 (22:41 hrs)

[2014] 4 SLR 651 ("*Leon Russel Francis*") of *whether the individual offender's capacity for rehabilitation is demonstrably high* so as to outweigh the concerns that are traditionally understood as militating against probation (at [14], cited in *Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300 ("*Praveen Krishnan*") at [29]). The rehabilitative potential of a young offender has been described as "one of the key considerations" in the court's endeavour to strike the right balance between deterrence and rehabilitation when sentencing such an offender: *Zuhairie* at [30]. The factors relevant to the assessment in this regard include the following (*Leon Russel Francis* at [15]; *Praveen Krishnan* at [30]):

(a) the strength of familial support and the degree of supervision provided by the offender's family for his rehabilitation;

(b) the frequency and intensity of the offender's wrongful activities;

(c) the genuineness of remorse demonstrated by the offender; and

(d) the presence of risk factors such as negative peers or bad habits.

67 At the second stage of the *Boaz Koh* framework, the court must select the appropriate sentence in view of the primary sentencing considerations identified and prioritised at the first stage. Where rehabilitation is the dominant sentencing consideration, probation would be one of the typical options at the court's disposal, given that probation places rehabilitation at the front and centre of the court's deliberation: *Boaz Koh* at [35]; see also [33] above. In contrast, where there is a need for both deterrence and rehabilitation, reformative training may be the most suitable sentence, given that it offers the court a useful middle ground between sending the offender to prison and meeting the desire to rehabilitate a young offender: *Boaz Koh* at [38]–[39] and *Al-Ansari* at [57]–[58].

Version No 2: 27 Oct 2020 (22:41 hrs)

The principles applied

68 In my judgment, rehabilitation should, in the light of the principles which I have outlined, retain its primacy in the sentencing of the Appellant, and probation was the most appropriate sentence to impose.

69 In respect of the first stage of the *Boaz Koh* framework (see [65]–[66] above), I agreed with the Prosecution that the Appellant's offences were serious because they involved motor insurance fraud, which: (a) adversely affects a large segment of the public by increasing the costs for motor insurers, which would in turn be passed on to consumers in the form of increased motor insurance premiums; (b) adversely affects the delivery of important financial services offered by the motor insurance regime; (c) is well organised and syndicated; and (d) is inherently difficult to detect. However, I ultimately disagreed with the Prosecution's initial position (prior to the preparation of the Report by Ms Ho) that there were sufficient reasons for displacing rehabilitation as the primary sentencing consideration in the somewhat exceptional circumstances of this case.

70 First, although the Appellant's offences were serious, it could not be said that the actual harm which they caused was severe. Neither CTI nor TMI made any payment arising out of the false insurance claims that the Appellant was involved in.

71 Second, it also could not be said that the Appellant was a hardened or recalcitrant offender. In this regard, the Prosecution initially argued that the Appellant's culpability was high because: (a) those like the Appellant who falsely claim to have been passengers in staged traffic accidents such as the Accident play a critical role in motor insurance fraud; and (b) the Appellant acted with premeditation throughout the material period by lying to the doctor

Version No 2: 27 Oct 2020 (22:41 hrs)

at CMG, the lawyers at JusEquity, and then the police when he was first interviewed in January 2015.

72 In my judgment, the Prosecution appeared to have overstated the role that the Appellant played in the motor insurance fraud scheme in this case. While it is true that a scheme of this nature requires the involvement of those who falsely claim to have been passengers, the same could be said of every other participant in such a scheme. It was thus inaccurate to paint the Appellant's role in the fraudulent scheme in this case as being so pivotal that it was almost as though he was the mastermind. And while the Appellant did indeed lie to the doctor at CMG and the lawyers at JusEquity, this did not point unequivocally to premeditation on his part. The fact that these lies were told simply went towards establishing the elements of the offences that the Appellant was charged with. More importantly, the facts suggested that the Appellant was someone who had been roped in at the eleventh hour by a close friend, and who had simply been following the instructions of other individuals who were more intricately involved in the fraudulent scheme (see [6]–[8] above). It was therefore incorrect to suggest that the Appellant's actions were premeditated. Notably, the Prosecution did not deny that the Appellant never sought, nor did he in fact receive, any financial benefit from his participation in the scheme.

73 Third, the Report issued by Ms Ho clearly showed that the conditions which make rehabilitative sentencing a viable option were present in this case. Having regard to, in particular, the factors set out by Chao JA in *Leon Russel Francis* at [15] (see [66] above), I found that the Appellant evinced a capacity for rehabilitation that was demonstrably high for the following four reasons:

(a) First, the Appellant was assessed to have strong support from his family members. In particular, his relationship with all his family

Version No 2: 27 Oct 2020 (22:41 hrs)

members seemed to have improved significantly since 2016. This was encouraging insofar as the existence of a strong family support system to assist the Appellant in his rehabilitation was concerned.

(b) Second, although the Appellant did indeed commit the present offences just nine months after the end of his previous probation stint, he had since been consistently engaged in meaningful employment, and had remained crime-free since 2012. In the meantime, he had also received glowing reviews while in National Service, including during his Basic Military Training stint from February to May 2017, as well as in his present role as a combat gunner since May 2017. This was a good indicator of his robust commitment towards leaving his errant ways behind.

(c) Third, the Appellant had expressed genuine remorse for his actions, having acknowledged the seriousness of his offences and their implications. This was reflected in his decision to come clean and confess to all that he had done upon his eventual arrest.

(d) Lastly, the Appellant was assessed to have made a conscious effort to spend more time with his family and to dissociate himself from the negative influences that he had previously exposed himself to. In particular, he had ceased contact with his peers with whom he used to consume alcohol and had stopped consuming alcohol altogether since 2016. The Appellant's risk of reoffending was also assessed to be "very low".

74 It was therefore clear that rehabilitation should remain the dominant sentencing consideration for the Appellant, and that this was not displaced by

Version No 2: 27 Oct 2020 (22:41 hrs)

the need for deterrence even though the offences committed by the Appellant were serious in nature.

75 Turning then to the second stage of the *Boaz Koh* framework (see [67] above), it was evident that probation was the most appropriate sentence to impose, especially given the Appellant's "very low" risk of reoffending. Indeed, probation was precisely what Ms Ho had recommended in the Report (see [22] above). Pertinently, the Prosecution also conceded, after reviewing the Report, that probation was the most suitable sentencing option on the facts of this appeal (see [27] above).

The recommended duration and conditions of probation should be accepted

76 I turn now to my reasons for accepting the duration and conditions of probation recommended by Ms Ho in lieu of those suggested by the Appellant.

77 As noted at [22] above, Ms Ho recommended that the Appellant should undergo 24 months of supervised probation, subject to: (a) a daily curfew from 11pm to 6am; (b) a requirement to undertake 200 hours of community service; and (c) a requirement for the Appellant's parents to be bonded. The Appellant requested that a shorter probation period of between 12 to 16 months be imposed, and also submitted that an accompanying requirement of up to 100 hours of community service would suffice. This was said to be justified on the basis that a 24-month probation period coupled with a 200-hour community service requirement would be too onerous, given the constructive changes that had been made in the Appellant's life since the time of his offences. It was said on this basis that the Appellant's rehabilitation could be sustained "even with minimal formal intervention". I disagreed with the Appellant, and saw no reason to depart from Ms Ho's recommendations. There were two reasons why I so decided.

Version No 2: 27 Oct 2020 (22:41 hrs)

78 First, while it is true that "the sentencing decision … lies within the exclusive remit of the court alone" such that the court is not bound to accept a probation officer's recommendations (*Praveen Krishnan* at [65]–[67]), the recommendations of probation officers generally ought to carry considerable weight. In *Praveen Krishnan*, Steven Chong JA noted (at [64]) that:

> … the recommendations of probation officers are often accepted by the court. According to a report commissioned by the Probation and Community Rehabilitation Service of the Ministry of Social and Family Development, 640 pre-sentencing reports were called for by the courts in 2016 and 96% of the recommendations were accepted by the courts (Ministry of Social and Family Development, Probation and Community Rehabilitation Service, *Annual Report 2016* (2016) at p 10).

79 In my view, it makes good sense for the court to give careful consideration to the reports prepared by probation officers. It is the probation officer who is usually best apprised of the offender's circumstances and, hence, of his suitability for the probation regime. Therefore, the court should ordinarily be slow to depart from the recommendations of a probation officer unless: (a) it is clear that the circumstances upon which the probation officer's recommendations were based were factually incorrect or have since changed materially; or (b) there was no proper basis for the probation officer's recommendations.

80 In the present case, the Appellant did not make any allegation that Ms Ho's recommendations were based on incorrect facts, nor did he suggest that the facts on which these recommendations were based had changed materially since Ms Ho prepared the Report. Rather, what was alleged, in essence, was that Ms Ho's recommendations lacked proper basis. I disagreed. While it was indeed true that a stint of 24 months' supervised probation and 200 hours of community service could be described as moderately intensive (see *Al-Ansari* at [56]), this was ultimately a recommendation made by Ms Ho,

Version No 2: 27 Oct 2020 (22:41 hrs)

having already considered the progress made by the Appellant since the commission of his offences in June 2012. This represented the degree of formal guidance that Ms Ho, as an expert, considered necessary to steer the Appellant further along on his road to full rehabilitation and reintegration into the community. It further bore reiterating that the present order of probation would not be the Appellant's first probation term, given that he had previously served a 21-month term of probation for a robbery offence (see [4] above). Accordingly, it could not be said that there was no basis for Ms Ho to recommend a stint of probation that was more intensive than the Appellant's first probation stint.

81 Second, and more fundamentally, insofar as the Appellant's request for a shorter period of probation and fewer hours of mandatory community service suggested that the probation term and the accompanying community service requirement were simply restrictions and inconveniences that were being imposed on the Appellant as punishment for his criminal actions, I emphatically disagreed. In my view, the adoption of such a conception of probation and the accompanying conditions in a case such as this would be misguided, and would in fact miss the point underlying the making of probation orders in the first place.

82 As I previously observed in *Boaz Koh*, probation is a sentence that "has as its primary object the swift reintegration of the offender back to society, and provides support to assist him in avoiding the commission of further offences" (at [35], citing Eric Stockdale & Keith Devlin, *Sentencing* (Waterlow Publishers, 1987) at p 208). This sentiment was also expressed by the then Minister for Community Development, Mr Yeo Cheow Tong, who stated at the second reading of the Probation of Offenders (Amendment) Bill (Bill 25 of

Version No 2: 27 Oct 2020 (22:41 hrs)

1993) (*Singapore Parliamentary Debates, Official Report* (10 November 1993) vol 61 at col 932):

> Young offenders are more likely to be in school or higher institutions of learning or at early stages of employment. By placing them on probation, we allow them to continue with their education or employment. Furthermore, they will benefit from the personal care, guidance and supervision of a Probation Officer. It will give them the opportunity to turn over a new leaf, and become a responsible member of society.

83 A term of probation is best seen as scaffolding erected by the State to facilitate the rebuilding of the promising life that a youthful offender started with, but seriously jeopardised through the wrecking ball of juvenile delinquency. Seen in this light, the term of probation and the accompanying conditions imposed in this case constitute a societal response that should be embraced, rather than shunned, by the Appellant. It reflects society's willingness to pour valuable resources into remoulding and reconstructing the Appellant's future. In this light, I saw no reason at all to deviate from Ms Ho's recommendations.

Conclusion

84 For these reasons, I allowed the appeal. The four-month imprisonment term which the District Judge imposed was set aside, and the Appellant was ordered to be placed on 24 months' supervised probation with effect from 5 July 2018, subject to the following conditions:

(a) a daily time restriction of 11pm to 6am;

(b) a requirement that the Appellant undertake 200 hours of community service; and

Version No 2: 27 Oct 2020 (22:41 hrs)

(c) a requirement that the Appellant's mother be bonded in the sum of $5,000 to ensure his good behaviour throughout the 24-month term of probation.

Sundaresh Menon
Chief Justice

Sadhana Rai (Criminal Legal Aid Scheme) and Khadijah Yasin (Mahmood Gaznavi & Partners) for the appellant;
Gregory Gan (Attorney-General's Chambers) for the respondent.

Version No 2: 27 Oct 2020 (22:41 hrs)