

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 27

Youth Court Appeal No 1 of 2023/01

Between

WNE

... Appellant

And

Public Prosecutor

... Respondent

GROUND OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Young offenders]

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WNE
v
Public Prosecutor

[2023] SGHCF 27

General Division of the High Court (Family Division) — Youth Court Appeal
No 1 of 2023/01
Choo Han Teck J
26 May 2023

5 June 2023

Choo Han Teck J:

1 In July and August 2022, the appellant, together with his elder brother (“P”), stole over 225 stored-value cards containing an aggregate value of at least \$2,134 from unattended motorcycles parked at multiple carparks across Singapore (“the theft offences”). They were, however, charged separately as the Public Prosecutor brought additional charges against P for offences he committed separately.

2 P was just under 16 years old when he committed the offences with the appellant. The appellant was then 14 years old. Apart from these offences, P also faced five other charges which did not involve the appellant. These included underage driving, driving without an insurance, cheating and facilitation of unauthorised access to bank accounts by handing over his ATM card and PIN number to a third party. P pleaded guilty to two charges (including

this present charge against the appellant), with the other four charges taken into consideration for the purposes of sentencing. In P's pre-sentencing probation report, he was assessed to be suitable for probation. On 13 December 2022, DJ Wendy Yu ordered P to be placed on probation for 21 months, with voluntary residency at the Boys' Town Hostel for 12 months.

3 The appellant pleaded guilty on 22 November 2022 to one charge of theft in furtherance of a common intention under s 379 read with s 34 of the Penal Code 1871 (2020 Rev Ed). The Youth Court also called for a probation report, but the appellant was assessed to be unsuitable for probation. The report recommended that he be placed in a Juvenile Rehabilitation Centre ("JRC") for 18 months. On 12 January 2022, the learned District Judge ("the DJ") ordered the appellant to reside in a JRC for 12 months.

4 The appellant appealed against the DJ's order, asking to be placed on home probation instead with a voluntary homestay in a Boys' Hostel. His appeal was based on the principle of parity. He was less culpable than his brother, and should not be given a harsher punishment than him. Counsel for the appellant, Mr A Rajandran, submitted that home probation with a 12-month voluntary residence at the Singapore Boys' Hostel (which was the sentence P received) is more appropriate in the circumstances. The Deputy Public Prosecutor, Matthew Choo, accepted Mr Rajendran's position. Having considered the circumstances, I allowed the appeal and substituted the DJ's order with an order of 21 months home probation with a voluntary residence.

5 At the hearing below, the DJ was of the view that probation was not suitable for the appellant. He reasoned that after the death of the appellant's father, the appellant would not have adequate family support, especially with his stepfather having an antecedent criminal record. The DJ also took into

account the appellant's poor conduct in school. The appellant played truant four to five days a week. In the light of those considerations, the DJ accepted the probation report's recommendation, and ordered the appellant to reside in a JRC instead.

6 The DJ took into account P's sentence of 21 months' probation including a residential stay at the Boys' Town Hostel for 12 months. Applying the principle of parity, the DJ adjusted the duration of residence in the JRC from 18 months (recommended by the probation officer) to 12 months.

7 The appellant's case on appeal, in essence, is that the probation report which the DJ referred to was unsatisfactory and should not have been followed. Mr Rajandran drew my attention to the striking similarities in the "Assessment" section of the probation reports between the appellant's report and P's report. Mr Choo confirmed that these similarities included the risk factors regarding the appellant's family environment. On this basis, Mr Rajandran argued that home probation ought to have been recommended for the appellant, noting that the family circumstances, household environment and offences committed were identical as between the appellant and P. If anything, Mr Rajandran says that the law ought to be more lenient toward the appellant because of his "cognitive disabilities" and his relative lack of culpability in comparison to P's aggravated offences.

8 I agree with Mr Rajandran. The DJ correctly took into account P's punishment in sentencing the appellant. But he had already considered probation to be inappropriate. Thus, P's punishment only mitigated the length of detention at the JRC. It may be, as Mr Rajandran says, that the DJ only knew of the orders made against P but did not have sight of P's probation report along with their striking similarity of circumstances to the appellant's. Having the

benefit of reading P's probation report, I am satisfied that the orders made in respect of the appellant ought not to be harsher than those made against P. This was probably why the learned DPP too accepts that the principle of parity would be more accurately applied in this way.

9 A term of home probation in itself may be inadequate to address the severity of the appellant's offence. Thus a 12-month stay at a Boys' Hostel instead of 12 months in the JRC should suffice. Both the JRC and the Hostel are structured and institutional environments for the rehabilitation of young offenders. The differences lie in the level of regimentation and supervision, the ability to return home daily and the ability to continue schooling in public schools. The Boys' Hostel would provide the appellant a structured environment for his rehabilitation, while not completely isolating him from the outside community. This is in my view vital, for it is easier for rehabilitation to run its course when the young offender remains connected with society so that the lessons learnt in the structured environment can be applied practically. This is, of course, subject to the level of delinquency of the offender, which in this case, is not an issue. For a young offender being sentenced for the first time, the prospects of a second chance must be open to him without crushing him at first blow.

10 Moreover, any negative influences in the appellant's home environment can be mitigated by careful curation of the home probation order. In particular, I have ordered that the appellant be placed in a Boys' Hostel separate from his brother, P. To address the issue of adverse associations with the appellant's stepfather, a close family friend of the appellant, one Mdm T, aged 47, has agreed to be the appellant's co-supervisor along with the appellant's mother.

11 For the foregoing reasons, I allowed the appeal and substituted the orders of the DJ with an order of home probation for 21 months, with a 12 month voluntary stay in the Singapore Boys' Hostel, on the same terms as was extended to his brother, P. I reminded the appellant that the success of his appeal is only the beginning of his rehabilitation, and cautioned him not to spurn this second chance given to him, for detention at the JRC along with its punitive effect, remains a real possibility should he fail in his probation.

- Sgd -
Choo Han Teck
Judge of the High Court

A Rajandran (M/S A. Rajandran) for appellant
Matthew Choo and Nicholas Khoo (Attorney-General's Chambers)
for the public prosecutor
