IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 181

Magistrate's Appeal No 9192 of 2022

Between

Niranjan s/o Muthupalani

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Adult offenders — Extremely strong propensity for reform]
[Criminal Law — Offences — Hurt]

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Introduction

1 This was an appeal against the sentences imposed by the District Judge ("DJ") in *Public Prosecutor v Niranjan s/o Muthupalani* [2022] SGDC 291 ("GD").

2 The appellant pleaded guilty to two charges under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") for voluntarily causing hurt ("VCH") to two individuals at "Stickies Bar" located at 50 Tagore Lane, #05-07, Singapore 787494 (the "bar") on 13 March 2020. The appellant admitted and consented to have three other related charges arising from the same incident taken into consideration for sentencing (the "TIC charges"). As the appellant was then a person subject to supervision under the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) ("CLTPA") and the offence of VCH is a scheduled

offence under the Third Schedule to the CLTPA, he was thereby liable to enhanced punishment under s 35 of the CLTPA. The DJ imposed a global sentence of three months' and two weeks' imprisonment by ordering the following sentences to run consecutively:

(a) *DCN-900157-2022*: three months' imprisonment for the VCH offence against the first victim, A Gopinath ("V1"); and

(b) *DCN-900156-2022*: two weeks' imprisonment for the VCH offence against the second victim, Chong Jui Jing Kenneth ("V2").

3 On appeal, the two main issues canvassed on the appellant's behalf were whether the DJ had erred in deciding that the appellant was not suitable for probation and hence declining to call for a probation report, and whether the sentence was manifestly excessive in view of the appellant having been diagnosed with Intermittent Explosive Disorder ("IED"). I set out my reasons for dismissing the appeal below, incorporating the oral remarks which I delivered at the hearing of the appeal.

Facts

4 The material facts are outlined in the Statement of Facts ("SOF"), which the appellant admitted to without qualification. The appellant was placed on police supervision by the Minister for Home Affairs under ss 30(1) and 33(1) of the CLTPA for three years beginning on 9 May 2019, *vide* a Police Supervision Order ("PSO"). The PSO was varied on 30 December 2019, and changes to the restrictions therein were imposed. However, the duration of the PSO remained unchanged.

5 On the evening of 13 March 2020, the appellant and his girlfriend went for drinks at the bar. V1 and V2 were also present at the bar that evening, together with their colleagues, Richard Burnen s/o Mahandrian ("Richard"), Ong Yeow Hwee Glenn ("Glenn") and Han Min Da ("Min Da").

6 At about 6.50pm, the appellant had a misunderstanding with V1 near the smoking corner. The appellant and V1 exchanged vulgarities, following which the appellant started to assault V1 by punching and kicking him. V1 did not retaliate. During the assault on V1, the appellant slapped V2 at least once in the face when he attempted to intervene. The incident was captured on closed-circuit television ("CCTV").

7 Following the incident, V1 and V2 proceeded to Khoo Teck Puat Hospital for medical examinations. V1 suffered blunt trauma to his left eye complicated by left eye periorbital oedema/haematoma, left conjunctival prolapse secondary to oedema and bilateral corneal abrasion. V2 suffered a contusion wound over his left cheek and chipped (or fractured) teeth. V1 and V2 were given three days of hospitalisation and medical leave respectively upon their discharge.

8 At the time of the commission of the VCH offences, which are scheduled offences under the Third Schedule to the CLTPA, the appellant was subject to supervision under the CLTPA by virtue of a PSO made on 9 May 2019. The appellant was thereby liable to enhanced punishment under s 35 of the CLTPA for both offences.

The proceedings below

Parties' submissions

9 The Prosecution submitted below that the appropriate sentencing framework for an offence under s 323 of the PC was the "two-step sentencing band" framework as laid down in *Low Song Chye v Public Prosecutor and another appeal* [2019] 5 SLR 526 ("*Low Song Chye*"). However, given that the maximum punishment prescribed by law for the offence of VCH had since been increased from two years' to three years' imprisonment with effect from 1 January 2020, the sentencing bands set out in *Low Song Chye* should be correspondingly increased by a factor of 1.5 times (the "modified *Low Song Chye* framework").

10 Applying the modified *Low Song Chye* framework, the Prosecution sought sentences of at least four months' and two weeks' imprisonment respectively in relation to the offences against V1 and V2. The Prosecution submitted that a consecutive sentence would be appropriate since the offences were distinct acts involving two victims.

11 On the other hand, the appellant requested for probation, or alternatively, a sentence of six to eight weeks' imprisonment for the offence against V1 and one week's imprisonment for the offence against V2, with both sentences running concurrently.

The decision below

12 The DJ declined to call for a Probation Suitability Report ("PSR"), finding that probation was not an appropriate sentence. The appellant did not have a strong propensity for reform given his lack of genuine remorse (GD at

[41]). This was because he only pleaded guilty some 17 months after he was first charged (GD at [41]) and he appeared to place blame "on everyone and everything but on himself" (GD at [42]). In particular, he placed the blame on the victims, and also on his purported mental illness and his alcohol consumption (GD at [42]). There were also no exceptional circumstances warranting the grant of probation (GD at [45]). In the DJ's view, the appellant's alcohol consumption would have contributed as much to the commission of the offences as the IED which he was diagnosed with (GD at [44]–[45]). The DJ therefore doubted the extent to which the appellant's mental condition contributed to the offences, given that the presence of alcohol also contributed towards the commission of the offences (see GD at [69(a)]).

13 Accordingly, the DJ applied the modified *Low Song Chye* framework as proposed by the Prosecution. Crucially, the DJ considered the mitigating factors of the appellant's mental illness (albeit giving it less weight), his plea of guilt (which the DJ noted was inherent within the existing *Low Song Chye* framework, in any event), his testimonials and his selection into the Singapore National Team for boxing since the offence. With these considerations in mind, the DJ sentenced the appellant to a global sentence of three months' and two weeks' imprisonment, ordering the following sentences to run consecutively:

(a) *DCN-900157-2022*: three months' imprisonment for the VCH offence against V1; and

(b) *DCN-900156-2022*: two weeks' imprisonment for the VCH offence against V2.

The grounds of appeal

14 The appellant submitted that the DJ erred in failing to call for a PSR to assess the appellant's suitability for probation.[1] First, the appellant had demonstrated a strong propensity for reform. The DJ erred by failing to accord due weight to the genuine expression of remorse by the appellant and in considering that he had pleaded guilty only at a late stage. The DJ also erred in not giving due weight to the fact that the appellant had not committed any further offences since the time of the present offences. Second, there were exceptional circumstances warranting the grant of probation, given that the appellant's mental disorder had a contributory link to the commission of the present offences. The DJ erred by finding that the appellant's alcohol consumption would have contributed as much as his mental disorder to the commission of the offences.

15 The appellant further submitted in his Petition of Appeal that the sentences imposed were manifestly excessive.[2] While this argument no longer appeared to feature as a primary thrust of the appellant's written submissions, I nonetheless considered whether the sentences imposed were manifestly excessive having regard to the relevant mitigating factors identified in the appellant's submissions.[3]

The issues

16 There were two key issues for determination in this appeal, namely:

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1 Written Submissions of appellant ("WSA") at paras 85–86.

2 Record of Appeal ("ROA") at p 25, para 3.1: "The Learned District Judge erred in meting out sentences that were manifestly excessive".

3 WSA at paras 24–73.

(a) Whether the DJ erred in not calling for a PSR ("Issue 1"). This issue, in turn, engaged the following sub-issues:

(i) Whether the DJ erred in finding that the appellant lacked an extremely strong propensity for reform.

(ii) Whether the DJ erred in finding that there were no exceptional circumstances warranting the grant of probation.

(iii) In the final analysis, whether deterrence would remain the dominant sentencing consideration given the serious nature of the offences here, such as to bar the grant of probation.

(b) Whether the sentences imposed by the DJ were manifestly excessive ("Issue 2").

Issue 1: Whether the DJ erred in not calling for a PSR

17 As highlighted by Sundaresh Menon CJ in *Public Prosecutor v Lim Cheng Ji Alvin* [2017] 5 SLR 671 at [6] and [7], while the law takes a presumptive view that rehabilitation is the dominant sentencing consideration for offenders aged 21 or under, this is not the case for offenders above the age of majority. The appellant was already 24 years old at the time of the offences in 2020. Rehabilitation would typically not be the dominant operative concern unless the offender concerned happens to demonstrate an extremely strong propensity for reform or there exist other exceptional circumstances warranting the grant of probation (see also *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 at [44]).

18 A three-limbed framework applies when assessing whether an offender had demonstrated an extremely strong propensity for reform (*Public Prosecutor v Siow Kai Yuan Terence* [2020] 4 SLR 1412 ("*Terence Siow*") at [55] and [56]):

(a) First, the court should consider whether the offender had demonstrated a positive desire to change since the commission of the offence(s) (the "first limb").

Under this limb, non-exhaustive factors that could indicate a positive desire to change include: (i) evidence of genuine remorse, which could be seen from a plea of guilt, acknowledgment of the seriousness of the offences and its implications or a full and frank disclosure of criminal activities beyond the offences for which the offender was presently charged; (ii) the taking of active steps post-offence to leave his errant ways behind; (iii) compliance with and amenability to rehabilitative measures; (iv) not re-offending since the index offence(s); and (v) evidence showing that the index offence(s) were "out of character".

(b) Second, the court should consider whether there were conditions in the offender's life conducive to helping him turn over a new leaf (the "second limb").

(c) If, after considering the first two limbs, the court came to a provisional view that the offender had demonstrated an extremely strong propensity for reform, the court ought then to consider, in light of the risk factors presented, whether there were reasons to revisit this finding. (the "third limb"). Risk factors include the offender's association with negative peers, or the presence of bad habits such as an offender's habitual drug use or dependence.

19 Having assessed the three limbs above, the court must ultimately consider whether the nature or gravity of the offence is such that it displaces rehabilitation as the dominant sentencing consideration. This may occur where for instance, there is a persistent need for deterrence and even retribution because of the gravity of the offence: see *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [30].

20 Having considered the appellant's arguments on his suitability for probation, I found that the DJ rightly found that probation was not a viable sentencing option. This was because the appellant neither had an extremely strong propensity for reform nor did there exist other exceptional circumstances warranting the grant of probation. In any event, I was satisfied that deterrence remained the overriding sentencing consideration, such as to bar the grant of probation in light of the serious nature and gravity of the offences here.

Whether the appellant was genuinely remorseful

21 The appellant submitted that the DJ erred in considering that the appellant displayed no evidence of genuine remorse. The appellant's challenge centred on the reasoning of the DJ in the following paragraphs of the GD (at [41]–[43]), which I reproduce in full below:

> 41 *I was of the view that there was no genuine expression of remorse by the accused. Despite that fact that the accused had eventually pleaded guilty before me, as pointed out by the Prosecution, this guilty plea finally came about 17 months after the accused was first charged in court.*
>
> 42 Throughout, *the accused seemed to be placing the blame on everyone and everything else but on himself*. It does not appear to me that he has acknowledged that he was responsible for his own actions. He has put the blame on the following:
>
> > (a) The victims. The accused had asserted that he was provoked by V1. Perhaps V1 did so. However, the CCTV

> footage clearly showed that the accused was the aggressive party throughout. He repeatedly punched V1 and even kicked him. V1 never retaliated at all. It is ironic that he now blames V1 for his prolonged aggressive act. I note also that he has not apologised to the victims, in particular V2, who was hurt by the accused only because he was trying to stop him;
>
> (b) Mental illness. The accused blamed his mental condition, namely IED, as contributing to his commission of the offence; and
>
> (c) Alcohol. He likewise blames alcohol as contributing to his commission of the offence.
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> 43 Although one could say that the accused has not committed any offences since the commission of the present offences, I did not place much weight on this despite the fact that the offence occurred 30 months before he was eventually sentenced. The accused was charged about a year after the incident, and it was through no fault of the Prosecution that took another 18 months before the case was finally disposed of.
>
> [emphasis added]

I noted that the analysis in this regard centred on the first limb of the *Terence Siow* framework which looks at whether the offender has displayed genuine remorse.

22 From the above passage, the appellant submitted that the DJ erred in finding that there was no genuine expression of remorse on his part.[4] The appellant's submissions proceeded on two fronts. First, the DJ erred in reasoning that the appellant lacked genuine remorse given that the guilty plea came only 17 months after he was first charged in court.[5] Second, the DJ erred in reasoning that the appellant had sought to place blame on the victims,[6] and

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4 WSA at paras 24–51.

5 WSA at paras 28–36.

6 WSA at paras 37–51.

also on his mental illness[7] and his alcohol consumption.[8] In my view, the DJ did not err in either aspect in concluding that the appellant lacked genuine remorse. I deal with both aspects of the appellant's submissions in turn.

Whether the DJ erred in considering the delay in the appellant's guilty plea

23 In relation to the first point, the appellant sought in his written submissions to explain why his plea of guilt came at a late stage. It was noted that the appellant's former counsel became indisposed before the matter came up for hearing. There were also multiple adjournments of the matter due to, among other things, the need to finalise the SOF by the Prosecution, his former counsel's issues with his practising certificate, amendment of the SOF and time taken for the appellant to be assessed by Dr Jacob Rajesh ("Dr Rajesh") for the preparation of a forensic report.[9] The chronology of events is summarised in the table below.[10]

Date	Event
10 March 2021	The appellant (represented by Counsel) was charged for his offences in State Courts Court 4B.
5 August 2021	First Criminal Case Management System ("CCMS") discussion was conducted between the Prosecution and the Defence.
11 August 2021	The appellant indicated that he wished to plead guilty. A Plead Guilty Mention was fixed on 21 September 2021.

7 WSA at paras 52–69.

8 WSA at paras 70–73.

9 WSA at para 28.

10 Adapted from Written Submissions of Respondent ("WSR") at para 51 and *Public Prosecutor v Niranjan s/o Muthupalani* [2022] SGDC 291 at [3].

21 September 2021	During the Plead Guilty mention, the appellant stated that he wished to claim trial to the charges. A pre-trial conference ("PTC") was scheduled for parties to take trial dates.
7 October 2021	Second CCMS discussion was conducted.
29 November 2021	Parties attended a PTC to take trial dates. The matter was fixed for four days of trial (26 to 27 January and 7 to 8 March 2022).
21 January 2022	Five days before the trial was to begin, parties attended a status PTC. Trial dates were vacated due to Counsel's unavailability.
22 March 2022	Parties attended a PTC. The appellant changed Counsel and the matter was adjourned for Counsel to obtain a psychiatric report.
29 March 2022	Third CCMS discussion conducted.
28 July 2022	Parties attended a PTC. The appellant indicated that he was willing to plead guilty to a revised Statement of Facts. A Plead Guilty Mention was fixed for 26 August 2022.
26 August 2022	The appellant pleaded guilty to the charges against him. The DJ adjourned the matter to 12 September 2022 for sentencing.
12 September 2022	The appellant was sentenced to a global sentence of three months' and two weeks' imprisonment. The appellant was allowed to defer his sentence until 27 September 2022, and his bail was extended accordingly.

	After the appellant had left the courtroom, it came to the DJ's attention that the appellant was subject to enhanced punishment under s 35 of the CLTPA. He was thus liable to be punished to a term of imprisonment of up to six years. This brought the matter beyond the jurisdiction of a Magistrate to try. Both parties agreed that the court should record a retraction of the appellant's guilty plea to allow the charges to be amended from MCN to DCN charges. This was scheduled for 27 September 2022.
27 September 2022	The case was re-mentioned with the charges having been amended from MCN to DCN. The appellant reaffirmed his plea of guilt and reconfirmed that the SOF was correct. The DJ proceeded to sentence the appellant to a global sentence of three months' and two weeks' imprisonment. On the same day, the appellant filed a notice of appeal against his sentence.

24 Based on the foregoing, the appellant contended that he played no part in the matter taking 17 to 18 months before being finally disposed of. It would be unfair to infer a lack of his remorse on his part on account of his late guilty plea because the matter took 17 to 18 months to be resolved on account of the many delays which took place (as summarised in the table above).

25 However, as the Prosecution rightly pointed out, the main point was that the appellant had failed to plead guilty at the earliest opportunity.[11] Despite initially indicating that he wished to plead guilty, on the date scheduled for his plea of guilt to be recorded, he went on instead to claim trial to his charges. This led to trial dates being fixed for January and March 2022. It was only a mere five days before trial was to begin, and after trial preparation had commenced,

[11] WSR at para 49.

that the appellant vacated the trial dates. This apparently came about because his counsel purportedly became indisposed and unavailable, and not because the appellant had changed his mind once again with a view to pleading guilty. His plea of guilt eventually only took place more than half a year later, on 26 August 2022.[12] This stood in stark contrast to the situation in *Terence Siow*, where the offender pleaded guilty at the earliest opportunity even before a pre-trial conference had been fixed.[13] Furthermore, even if there was some discrepancy in the SOF which erroneously identified the appellant's girlfriend as a possible victim of violence, this need not necessarily have been sufficient cause for a decision to claim trial and further prolong the proceedings. The appellant did not offer any other explanation for why any dispute over the SOF would have caused undue delay. In these circumstances, the appellant's guilty plea was undoubtedly delayed by his own doing. In my assessment, the DJ was correct to find that his late plea of guilt was not indicative of any genuine remorse on his part.

Whether the DJ erred in considering that the appellant had sought to place blame on the victims, his mental illness and alcohol consumption

26 Contrary to the DJ's finding, the appellant submitted that he had not, in fact, sought to place blame on the victims, or on his mental illness or his alcohol consumption in such a way as to show that he was not genuinely remorseful.

27 Dealing first with the DJ's finding that the appellant had sought to place blame on his IED and alcohol consumption for his offence, the core of the appellant's case below and on appeal did in fact relate to the contributory effect of his IED and alcohol consumption in the commission of the offence. This was

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12 WSR at para 52.

13 WSR at para 53.

notwithstanding the disagreement between the parties on the relative contribution of either IED or alcohol to the offence. This is an issue which I explore in greater detail below (see below at [31]–[44]).

28 In any event, the more critical indicia for the appellant's genuine remorse (or lack thereof) would be whether he had, in fact, attempted to place blame on the victims. The appellant submitted that his reference to the provocation by the victims in his plea in mitigation ought not to be seen as placing blame on the victims. Rather, it should be read as a reference to the presence of "non-grave and sudden provocation"[14] in the context of it being a recognised mitigating factor which the court should consider. In my view, the DJ could not be faulted for finding that the appellant did appear to be blaming the victims in his plea in mitigation. According to the DJ in his GD at [42(a)]:

> The accused had asserted that he was provoked by V1. Perhaps V1 did so. However, the CCTV footage clearly showed that the accused was the aggressive party throughout. He repeatedly punched V1 and even kicked him. V1 never retaliated at all. It is ironic that he now blames V1 for his prolonged aggressive act. I note also that he has not apologised to the victims, in particular V2, who was hurt by the accused only because he was trying to stop him …

29 The Prosecution contended that the appellant's blaming of the victims was evident from the appellant's plea in mitigation, as the following extracts demonstrate:[15]

> 25 … It was this misunderstanding and exchange of vulgarities that led to [the appellant] *being provoked to the point that he*

14 WSA at paras 38 and 43.

15 ROA at pp 826–827.

> *had an aggressive outburst.* The *other victims were also hurt as they attempted to intervene in the incident.*
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> 26 … [the appellant] was *provoked into his actions due [to] Gopinath hurling vulgarities at him*, not only in relation to [the appellant] but also his family.
>
> …
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> 30 … *the degree of provocation was high* as it involved vulgarities being directed at [the appellant] about his family. The *time between the provocation and the loss of self-control was also very short*, as [the appellant] reacted almost instantly. We humbly submit that *this had the tendency of reducing the objective gravity of the offences*.
>
> [emphasis added]

30 In my view, nowhere in the appellant's plea in mitigation or even in the appeal submissions was there any discernible expression of concern for or contrition towards the victims for his offences. This could have taken, for example, the form of an apology or an offer of compensation. Instead, the appellant's plea in mitigation, as reproduced above, showed that the appellant engaged in victim-blaming, justifying his four-minute-long assault on the five victims through the provocation he perceived from the vulgarities emanating from a single victim.[16] As to the appellant's point that his plea in mitigation ought to be more properly seen as a mere reference to the non-grave and sudden provocation of the victim, I was not satisfied that this would have cast the appellant in a better light. The appellant may have been provoked, but his violent response, which extended to not only V1 but also V2, was clearly wholly disproportionate. He also sought to explain away how the other victims were only hurt because they attempted to intervene. The appellant's lack of remorse was palpable from the complete absence of the following: an acknowledgement of the brutality of the assault, an offer to pay for the victims' medical bills, or

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16 WSR at para 57.

even a simple apology.[17] Even if I accepted the appellant's assertion in his plea in mitigation that "[he] has at all times cooperated with the authorities, evidencing his genuine remorse", there were scant details of his co-operation.[18] It was also unclear how the applicant could have cooperated with the authorities in a manner that could have evidenced his remorse. The appellant could be readily identified and his actions were visible in the extended CCTV footage. These would have been a central feature in the investigations and his eventual prosecution.

Whether there were exceptional circumstances warranting the grant of probation

31 The appellant submitted that there was an exceptional circumstance warranting the grant of probation in light of IED having a major contributory link to his offences.[19] The appellant's mental illness in the form of IED would render deterrence less effective, and rehabilitation should take precedence or, at the very least, play an important role in the sentencing process. This was supported by *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 at [59], where the Court of Appeal reiterated that the existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process. The DJ rejected this argument by finding that the appellant's alcohol consumption would have contributed as much as the IED to the commission of the offences. On appeal, the appellant emphasised that the Winslow Clinic Medical Report prepared by Dr Rajesh dated 20 June 2022 (the "WCMR") states that IED was

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17 WSR at para 58.

18 ROA at p 822; WSR at para 60.

19 WSA at para 83.

a major contributory link to the appellant's offending.[20] As Dr Rajesh provided the only expert opinion on the matter, the DJ ought not to have substituted Dr Rajesh's views for his own view that alcohol played just as much of a role as IED in the appellant's offending.[21]

32 In my view, the DJ did not err in concluding that alcohol would have contributed as much to the commission of the offences as the appellant's IED. That said, I would clarify that it was not the finding of this court, or the DJ, that the appellant did not suffer from IED *at all*. The enquiry really pertained to the relative contribution of the appellant's IED and alcohol consumption to the commission of the present offences. This question effectively turned on the appropriate weight to be placed on the conclusion in the WCMR as to the contributory link to be drawn between the appellant's IED and the present offences.

33 At the outset, I was mindful that the diagnosis of IED must be viewed alongside the appellant's acknowledged alcohol abuse. According to the appellant's account to Dr Rajesh, he had been drinking since he was 15, and his acts of violence tended to be linked to his drinking.[22] The WCMR indicated that he suffered from IED at the material time, and this was a major contributory factor in his alleged offences. Before the DJ, the Prosecution sought to challenge the validity of this finding but did not go so far as to submit, as it did on appeal, that the finding was so flawed or deficient as to be of no assistance whatsoever to the court.

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20 WSA at para 63; see ROA at pp 1004–1011 for the Winslow Clinic Medical Report dated 20 June 2022 ("WCMR")

21 WSA at para 55.

22 WCMR at para 14.

34 I was conscious that in *Kanagaratnam Nicholas Jens v Public Prosecutor* [2019] 5 SLR 887 at [2], Menon CJ had held that a psychiatric report is unhelpful if it fails to set out underlying evidence or details of the analytical process or reasons supporting its conclusions. As the appellant acknowledged in his written submissions, "expert witnesses owe a duty to the court to ensure that their evidence is reliable and fit for court use, and courts will not hesitate to reject evidence which is not fit for purpose": *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 ("*Wong Tian Jun De Beers*") at [19]. The Prosecution stressed that the conclusions in the WCMR suffered from serious flaws and were thus unreliable. Dr Rajesh's opinion was exclusively based on the self-reported information of the appellant, his family members and his girlfriend.[23] No reference was made to the CCTV footage, the only objective evidence on record, to aid his assessment.[24] Dr Rajesh's conclusion that there was a major contributory link between the appellant's IED and the offences appeared to be wholly circular. The WCMR essentially stated that IED had a major contributory link to the offending because there was an impairment of self-control, and the evidence of impairment of self-control was due to the underlying IED.[25] According to the Prosecution, the following figure illustrated the circularity in the reasoning in the WCMR:[26]

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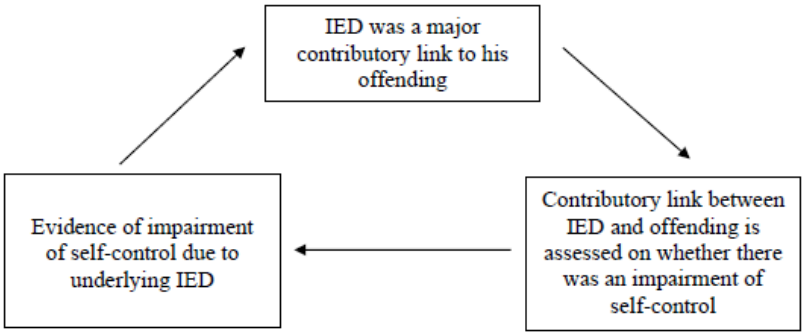
23 WSR at para 67.

24 WSR at para 69.

25 WSR at para 81.

26 WSR at para 81.



35 There were some indications that the WCMR lacked proper analysis and the conclusion may have been unsupportable having regard to the relevant diagnostic criteria for IED as contained in the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Publishing, 5th Ed, 2013) (the "DSM-5").[27] I provide two examples. Criterion F provides that "[t]he recurrent aggressive outbursts are ... not attributable to ... the physiological effects of a substance (*eg*., a drug of abuse, a medication)." This is repeated elsewhere in the DSM-5 manual where it is stated that "[a] diagnosis of [IED] should not be made when impulsive aggressive outbursts are nearly always associated with intoxication with ... alcohol".[28] As the Prosecution pointed out, given the conclusion in the WCMR that the appellant's consumption of alcohol at the material time also played a contributory role to his alleged offences, a discussion on whether the appellant's aggressive outbursts were attributable to the effects of alcohol ought to have been forthcoming.[29] Nowhere was such a discussion found in the WCMR.

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27 Respondent's Bundle of Authorities ("RBOA") at p 305.

28 RBOA at p 308.

29 WSR at para 77.

36 For another example, Diagnostic Criterion C prescribes that "[t]he recurrent aggressive outbursts are not premeditated ... and are not committed to achieve some tangible objective (e.g., money, power, intimidation)."[30] The appellant's counsel emphasised in oral submissions that the CCTV footage showed that the appellant had retained his presence of mind and did not simply lash out mindlessly at everyone in his vicinity. Indeed, the appellant sought to pin the blame for the assault on his perceived provocation by V1 in his plea in mitigation (see above at [30]). I was of the view that at the very least, this indicated that the appellant was animated by his personal objective of retaliating against the perceived slight against him and by a desire to teach V1 a lesson. This would be at odds with Criterion C, a criterion which in any event did not appear to have been explored in any detail in the WCMR.[31]

37 Nonetheless, I was ultimately of the view that the WCMR did not appear to be wholly unreliable or deficient, even if it was based entirely on self-reported and potentially self-serving accounts by the appellant and interested parties. I was accordingly unable to accept the Prosecution's primary position on appeal that the report should be given no weight at all. It cannot be said, as the Prosecution submitted, that Dr Rajesh had totally misapplied the criteria in the DSM-5 for the diagnosis of IED such that zero weight should be accorded to the WCMR.[32]

38 The DJ took the same view by not rejecting the IED finding outright and going on to evaluate the appropriate weight to be attached to the WCMR. I agreed that the DJ was justified in adopting this approach, having regard to the

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30 RBOA at p 305.

31 ROA at pp 1010–1011.

32 WSR at paras 70–79.

position taken by the Prosecution in the proceedings below. Nevertheless, I was also of the view that the DJ was correct to express doubt as to the cogency of the findings in the WCMR, which had to be evaluated on its face since Dr Rajesh was not called upon to provide any clarification, whether below or on appeal. Put simply, the WCMR, on its face, would suggest that while the appellant did suffer from IED, alcohol consumption had also played a significant part in his offending conduct. In my view, alcohol consumption had more likely than not exacerbated his IED, and if IED was a major contributory factor, it would be fair to say that alcohol consumption and the corresponding likelihood of intoxication was strongly contributory as well.

39 In reaching this conclusion, I was conscious that the *existence* of a contributory link between the appellant's alcohol consumption and his offending appeared to be undisputed in the appellant's written submissions.[33] Again, the dispute centred on the relative *strength* of the contributory link between the appellant's alcohol consumption and IED with the offences. Indeed, the WCMR at paragraph 27 stated that had the appellant consumed alcohol at the material time, this "may [have] also played a disinhibitory role in reducing his threshold for anger". Furthermore, at paragraph 28, the WCMR stated that given the appellant's history of getting into fights after consuming alcohol, "his consumption of alcohol at the material time also played a contributory role to his alleged offences at the material time".

40 To be clear, I would state that I would not have been persuaded by any argument that the appellant was not intoxicated at all at the time of the offences. The appellant's counsel suggested that there was evidential uncertainty on matters such as the precise timing and intervals at which the appellant had been

[33] WSA at paras 64 and 70.

drinking between his time of arrival at the bar at 3.00pm to the time of the fight at around 7.00pm. This had to be evaluated alongside the appellant's own account, as set out in paragraph 23 of the WCMR, that he had downed "about 10 to 15 glasses of alcohol (vodka) and drank some beer" since about 3.00pm that day. It was entirely in his own self-interest to claim on appeal that he was not intoxicated at all, just as he had professed in his self-reported account to Dr Rajesh. It was not open to him to suggest that this might have been because the "10 to 15 glasses of [vodka]" and "some beer" could have been substantially watered down in some way or to assert that he could have had an abnormally high threshold of alcohol tolerance. I was also not persuaded that being intoxicated must necessarily mean that the appellant must have been shown on CCTV to be visibly and demonstrably inebriated. But even if I have erred in my assessment that he was intoxicated, it is highly unlikely that his judgment was not at least substantially affected by what would objectively appear to have been a very high level of alcohol consumption. This could just as easily have fuelled his aggressive flare-up.

41 On a related note, I was also not convinced by the appellant's point in oral submissions that simply because the corroborative accounts, as set out in paragraphs 20 to 22 of the WCMR, from his mother, girlfriend and sister did not specifically mention alcohol consumption accompanying prior acts of violence or aggression, this must mean that he did not consume any alcohol at all when those acts were committed. All this remained speculative at best. On the other hand, paragraph 14 of the WCMR provides helpful context to the finding of IED, in particular in the appellant's own account of "being involved in fights after drinking" and "getting more angry after drinking". Thus, while he may have suffered from previously undiagnosed IED, it was clear that alcohol consumption would have exacerbated his IED and resulted in further

disinhibitory behaviour. At paragraph 16 of the WCMR, the appellant reinforced this by reporting that "his anger was worse after drinking alcohol on some occasions". Indeed, the incident in question in the present case was plainly one such occasion.

42 I was also of the view that the appellant's claim to have been affected by IED and the suggestion in the WCMR that he had failed to control aggressive impulses were at odds with the objective evidence from the CCTV footage. The footage showed the appellant persistently targeting V1. He then turned on those who tried to help V1. This was also emphasised by the appellant's counsel during oral submissions. However, in my view, the CCTV footage was strongly indicative of the intentionality and motivation behind the appellant's actions. From the footage, it was evident that the appellant intended to retaliate against V1 to teach him a lesson and to intimidate his friends who intervened.

43 The appellant's counsel sought to extend the point above in oral submissions by submitting that the footage showed that the appellant had retained his presence of mind and so could not have been "terribly inebriated", in order to downplay the contributory link between his alcohol consumption and the offences. It was true that the appellant was not simply lashing out mindlessly at anyone or anything that came his way. This was very clear from the fact that he did not hit his girlfriend or the security guard. He could even speak to his girlfriend and the security guard, albeit briefly. While I accepted that the appellant did retain his presence of mind, I found that this could also work against the appellant instead, as it would show that IED could not have had as major a contributory link as the appellant submitted. The appellant's actions cohered with his lucidity, and thus cast doubt on Dr Rajesh's analysis of the DSM-5 criteria. As noted at paragraph 24 of the WCMR, a diagnosis of IED requires that impulsive outbursts should not be committed to achieve some

tangible objective (Criterion C of the DSM-5).[34] More importantly, with reference also to paragraph 24 of the WCMR, the aggressive outburst in this instance might possibly be better explained by his alcohol consumption. To my understanding, this was how the DJ assessed the WCMR, and I agreed that he was justified in doing so.

44 From the above, I found that the DJ did not err in concluding that alcohol would have contributed as much (or, at the very least, strongly) to the commission of the offences as the appellant's IED. Accordingly, there was no exceptional circumstance warranting the granting of probation.

45 For completeness, I considered the remaining arguments advanced by the appellant in support of the grant of probation under the *Terence Siow* framework. In relation to the first limb, the appellant submitted that he took active steps post-offence to leave his errant ways behind. He had received follow-up psychiatric treatment and completely given up consuming alcohol since the incident, thus remaining crime-free for over 36 months since his offending.[35] In relation to the second limb, the appellant also submitted that there was the presence of strong familial support. The appellant was well supported by his family and girlfriend, who formed his support structure to aid in his rehabilitation.[36] To the appellant's credit, he did not seek to argue that the offences were out of character. Indeed, being under a PSO on account of his prior involvement with secret society activities, such an argument would have been a non-starter in any event.

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34 ROA at p 1010; RBOA at p 305.

35 WSA at para 80.

36 WSA at para 79.

46 In my view, while the above points did go some way to support the appellant's rehabilitative potential, I remained ultimately unpersuaded that the appellant was suitable for probation. The more likely inference was that rather than feeling genuine remorse for what he had done, the appellant merely regretted his conduct and its consequences. His conduct was indeed regrettable, but regret does not inexorably equate to remorse. To his credit, he had shown commitment to change and had not reoffended. However, his desire to change and move on appeared to be borne primarily out of self-interest. He may have taken responsibility for his own efforts to reform, but it was not evident that he felt responsible or remorseful for his offending conduct. There was still some element of victim-blaming, in any event, as the thrust of his arguments on appeal was still to blame V1 for causing the perceived provocations. Even those who did not provoke him were assaulted, not for no apparent reason (leaving aside IED as he claimed), but because they were V1's companions who tried to intervene to de-escalate and defuse the situation.

Whether deterrence was the dominant sentencing consideration given the serious nature of the offences

47 Having considered the three limbs of the *Terence Siow* framework, the task remains for the court to consider whether the nature or gravity of the offence is such that it displaces rehabilitation as the dominant sentencing consideration. This may occur where for instance, there is a persistent need for deterrence and even retribution because of the gravity of the offence: *Boaz Koh* at [30].

48 The appellant acknowledged that the "focus on rehabilitation can be diminished or eclipsed in scenarios where, for example, the offence is serious; the harm caused is severe; the offender is hardened and recalcitrant; or the

conditions do not exist to make rehabilitative sentencing options viable: *Lim Chee Yin Jordon*, at [35]".[37] However, the appellant merely asserted his position, without elaboration, that the present offences were not so serious, the harm caused was not so severe and that he was not a hardened or recalcitrant offender.[38]

49 The Prosecution submitted that the dominant sentencing consideration here was deterrence as this was a classic case of "face rage", with a "key feature being the commission of violence in response to a perception of affront, often unintentional or slight (see *Public Prosecutor v Chaw Aiang Wah* [2004] SGHC 164 ("*Chaw Aiang Wah*"). From the SOF, however, it appeared to me that the precise genesis of the offences was unclear. All that was stated in the SOF was that the appellant had a "misunderstanding" with V1 near the smoking corner prior to the assault. Following this, the appellant and V1 exchanged vulgarities which led to the appellant punching and kicking V1.[39] Putting aside whether the present offences could be characterised as "face rage", it is indisputable that deterrence must be the dominant sentencing consideration for the violent offences here. While raised in the context of "face rage" offences, the observations of VK Rajah JC (as he then was) in *Chaw Aiang Wah* at [19] are apposite: "[c]ulprits who resort to violent "self-help" to settle scores, real or otherwise, must be prepared to face deterrent sentences in view of the public interest in the prevention of such incidents."

50 In my view, deterrence remained the dominant sentencing consideration, given that the offences were serious and the harm caused was severe. The

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37 WSA at para 17.

38 WSA at paras 82 and 65(c).

39 ROA at p 13.

offences were serious because they involved a one-sided assault against five victims for a period of four minutes in a public area. With regard to the assault against V1, the assault was especially serious, with V1 being on the receiving end of punches and kicks even after he was kneeling on the ground in what appeared to be a plea for mercy which fell on deaf ears. Furthermore, the appellant had committed the offences while being subject to a PSO for his involvement in secret society activities.[40] The harm caused was undoubtedly severe given that the victims suffered several injuries including, but not limited to, a "black eye", temporary loss of sight, a scratched cornea and a fractured tooth.[41]

51 In the round, I was persuaded by the Prosecution's case that any potential for rehabilitation would be trumped by the need for deterrence. The seriousness of the offences and harm caused would warrant the same outcome as in the case of *GCO v Public Prosecutor* [2019] 3 SLR 1402 ("*GCO*") where I had held that the offender's potential for rehabilitation was eclipsed by deterrence given the serious nature of the offence of outrage of modesty. This conclusion was warranted despite the offender "be[ing] said to" have an "extremely strong propensity for reform" (*GCO* at [42]) because he had complied with his counselling and psychiatric treatment schedules, had strong family support from his family and his girlfriend and was untraced prior to the commission of the offence.

52 For the reasons above, I found that the appellant was not suitable for probation. I accordingly affirmed the DJ's decision to decline to call for a PSR.

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40 ROA at p 13, para 12.

41 ROA at p 13, para 10.

Issue 2: Whether the sentences imposed by the DJ were manifestly excessive

53 In assessing whether the DJ's sentences were manifestly excessive, it would first be necessary to consider the applicable sentencing framework for s 323 offences following the amendments to s 323 of the PC on 1 January 2020. The relevance of this question arises from the fact that the *Low Song Chye* framework had been laid down before the amendments to s 323 of the PC on 1 January 2020, which increased the maximum imprisonment term for such an offence from two to three years.

54 Accordingly, there are two sub-issues which must be addressed. First, what is the applicable framework in relation to s 323 offences? Second, did the DJ err in the consideration of the appropriate sentencing factors to arrive at a sentence that was manifestly excessive?

The revised sentencing framework for s 323 offences

55 In calibrating the sentence to be imposed, the DJ adopted the Prosecution's proposed modified framework based on the *Low Song Chye* framework, which applies to first-time offenders who plead guilty to an offence under s 323 of the PC.

56 Under the *Low Song Chye* framework, a two-stage inquiry is applicable as follows (*Low Song Chye* at [78]):

> (a) At the first stage, the court should identify the sentencing band and where the particular case falls within the applicable indicative sentencing range by considering the hurt caused by the offence. This would allow the court to derive the appropriate indicative starting point.

(b) At the second stage, the court should make the necessary adjustments to the indicative starting point sentence based on its assessment of the offender's culpability as well as all other relevant factors. This may take the eventual sentence out of the applicable indicative sentencing range. The aggravating and mitigating factors identified in *Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") at [62] to [70] and [71] to [75], respectively are relevant at this step.

57 The modified *Low Song Chye* framework entailed a directly proportional increase to the existing sentencing bands by a factor of 1.5 times. This corresponds to the increase in the maximum permissible imprisonment term from two years' to three years' imprisonment following the amendments to s 323 of the PC.

58 The following table sets out the existing and modified *Low Song Chye* sentencing bands as adopted by the DJ below (GD at [14]):

Band	**Hurt caused**	**Sentencing range under the existing *Low Song Chye* framework:** **For offences committed before 1 Jan 2020**	**Proposed sentencing range under the modified *Low Song Chye* framework:** **For offences committed after 1 Jan 2020**
1	**Low harm:** no visible injury or minor hurt such as bruises, scratches, minor lacerations or abrasions	Fines or custodial term up to 4 weeks' imprisonment	Fines or custodial term up to 6 weeks' imprisonment

2	**Moderate harm:** hurt resulting in short hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function	Between 4 weeks' and 6 months' imprisonment	Between 6 weeks' and 9 months' imprisonment
3	**Serious harm:** serious injuries which are permanent in nature and/or which necessitate significant surgical procedures	Between 6 months and 24 months' imprisonment	Between 9 months and 36 months' imprisonment

59 The Prosecution submitted that the DJ's approach in applying the modified *Low Song Chye* framework was correct.[42] Furthermore, this approach had been consistently applied by the District Judges in the State Courts.

60 I agreed with the DJ's approach of extrapolating the indicative imprisonment term in each band by 1.5 times in a proportionate and linear fashion. As the DJ observed, increasing the ranges of the various sentencing bands would allow the court to utilise the full spectrum of the punishment prescribed by law. At the same time it would allow the court to consider the full extent of any aggravating and mitigating factors that may be present. The elements of the primary offence and the relevant sentencing considerations remain unchanged. All that had changed through the s 323 PC amendments was the enhancement of the maximum permissible punishment, and scaling the sentencing bands upwards accordingly would reflect Parliament's intent to

[42] WSR at para 94.

enlarge the sentencing range. As the Prosecution pointed out, the same approach was endorsed by the High Court in *Haleem Bathusa bin Abdul Rahim v Public Prosecutor* [2023] SGHC 41 at [44]. This was also the approach taken in the State Courts in cases such as *Public Prosecutor v Fei Yi* [2022] SGDC 81 at [76]. In any event, while the appellant sought to dissuade the court below from adopting the modified framework based on the "mere arithmetic approach", he did not appear to have disputed the application of the modified framework on appeal. Accordingly, I found that the DJ did not err in his application of the modified *Low Song Chye* framework.

61 In laying down the sentencing framework in *Low Song Chye*, I observed (at [77]) that a considerable number of s 323 cases were uncontested and thus devised the framework therein on the basis that it applied to first-time offenders who pleaded guilty. Pertinently, I had stated (at [78]) that "[a]ppropriate calibrations can be made in situations where offenders have claimed trial." This would necessarily entail consideration of appropriate uplifts in the sentences for offenders who are convicted after trial. Notwithstanding my prior observations, I was of the view that it would be timely and helpful to specify a revised sentencing framework, while still based on the existing *Low Song Chye* framework, which applies to offenders who have *claimed trial*. This framework applies to all offences committed after 1 January 2020 *in place of* the modified *Low Song Chye* framework adopted by the DJ below, which was based on first-time offenders who pleaded guilty. I elaborate on my reasons for doing so below.

62 From a survey of the reported lower court decisions since 2020, it became apparent that there were various instances where the existing *Low Song Chye* framework had potentially been misapplied. The lower courts had, at times, apparently overlooked the fact that the existing framework applied

specifically to first-time offenders who had pleaded guilty. In some cases, the framework was applied to cases involving an offender claiming trial without any express consideration of a potential uplift to the sentence on account of this fact (see *eg*, *Public Prosecutor v Bibianna Lim Poh Suan* [2020] SGMC 14; *Public Prosecutor v Leo Mona* [2020] SGDC 135; *Public Prosecutor v Ng Koon Poh* [2022] SGMC 50). There were also cases where double weight appeared to have been given to an offender's guilty plea through the application of the sentencing ranges in the *Low Song Chye* framework (which already accounts for an offender's guilty plea) and allowing a further discount for the offender's guilty plea (see *eg*, *Public Prosecutor v Muhamad Naqiuddin Khan Bin Jhangir Khan and others* [2021] SGDC 269; *Public Prosecutor v Ainon binte Mohamed Ali* [2020] SGMC 7). In the interests of greater clarity and consistency in sentencing, and to reduce the risks of future potential misapplication of the sentencing framework, I was of the view that it would be helpful to set out a revised sentencing framework based on offenders *claiming trial*.

63 I set out below the revised indicative sentencing ranges for offenders *claiming trial* to VCH offences committed after 1 January 2020. This is found in the rightmost column of the table below, where the sentencing ranges under the existing *Low Song Chye* and modified *Low Song Chye* frameworks have also been reproduced for ease of comparison.

Band	**Hurt caused**	**Sentencing range under the existing *Low Song Chye* framework (first offenders pleading guilty):** **For offences committed before 1 Jan 2020**	**Sentencing range under the modified *Low Song Chye* framework (first offenders pleading guilty):** **For offences committed after 1 Jan 2020**	**Revised sentencing range for first-time offenders claiming trial (offenders claiming trial):** **For offences committed after 1 Jan 2020**
1	**Low harm:** no visible injury or minor hurt such as bruises, scratches, minor lacerations or abrasions	Fines or custodial term up to 4 weeks' imprisonment	Fines or custodial term up to 6 weeks' imprisonment	Fines or custodial term up to 8 weeks' imprisonment
2	**Moderate harm**: hurt resulting in short hospitalisation or a substantial period of medical leave, simple fractures, or temporary or mild loss of a sensory function	Between 4 weeks' and 6 months' imprisonment	Between 6 weeks' and 9 months' imprisonment	Between 8 weeks' and 12 months' imprisonment

3	**Serious harm:** serious injuries which are permanent in nature and/or which necessitate significant surgical procedures	Between 6 months and 24 months' imprisonment	Between 9 months and 36 months' imprisonment	Between 12 months' and 36 months' imprisonment

64 I was mindful that in practice, a discount of up to one-third of the sentence may be given for plead guilty cases (see *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR 361 at [20]). However, there is no general rule that pleading guilty automatically entitles an offender to a fixed discount of one-third off his sentence. As noted by Menon CJ in *Wong Tian Jun De Beers* at [41], sentencing is ultimately to be assessed by reference to all the facts and circumstances. The revised indicative sentencing ranges merely set out the range of suggested sentences and a sentencing court remains free to calibrate the appropriate sentence.

65 For avoidance of doubt, the revised sentencing framework entails only the broadening of the indicative sentencing ranges based on offenders claiming trial. The relevant sentencing factors remain unchanged. As I had earlier found in *Low Song Chye* (at [78(b)]), the sentencing factors identified in *BDB* remain applicable at the second stage of the framework.

66 To recapitulate, the relevant aggravating factors include (*BDB* at [62]):

(a) the extent of deliberation or premeditation;

(b) the manner and duration of the attack;

(c) the victim's vulnerability;

(d) the use of any weapon;

(e) whether the attack was undertaken by a group;

(f) any relevant antecedents on the offender's part; and

(g) any prior intervention by the authorities.

67 The relevant mitigating factors include (*BDB* at [71]):

(a) the offender's mental condition;

(b) the offender's genuine remorse; and

(c) the offender's personal financial or social problems.

Did the DJ err in the consideration of the appropriate sentencing factors?

68 Preliminarily, I would make some observations regarding the scope of the appellant's submissions on appeal in relation to the issue of whether the sentence imposed was manifestly excessive. In the Petition of Appeal, the appellant maintained that the DJ's sentence was manifestly excessive.[43] However, the appellant did not expressly make clear how his arguments would go towards showing that this was the case, as the written submissions appeared to focus exclusively on the grant of probation. It was perhaps due to this ambiguity in the appellant's submissions that the Prosecution noted that "the

[43] ROA at p 25: "The Learned District Judge erred in meting out sentences that were manifestly excessive".

appellant [has] not challeng[ed] the DJ's calibration of the imprisonment terms".[44] In this regard, I noted that the appellant had placed the core of its arguments under the header entitled "The Mitigating Factors".[45] This appeared to go towards the contention that the DJ's sentence was manifestly excessive, in addition to the arguments relating to the DJ's purported error in failing to call for a PSR. Notwithstanding this ambiguity, I proceeded to consider whether the DJ's sentence was manifestly excessive having regard to the mitigating factors highlighted by the appellant.

69 In applying the modified *Low Song Chye* framework, the DJ assessed at the first stage that the indicative starting sentence for the charges involving V1 and V2 ought to be seven weeks' and one week's imprisonment respectively, based on the harm caused to each victim. The appellant's arguments did not appear to dispute the correctness of the DJ's assessment in this regard.

70 At the second stage of the framework, the DJ adjusted the indicative starting sentence based on the relevant factors present.

71 In relation to the charge involving V1, the DJ considered that the following culpability-increasing factors justified an uplift of four weeks' imprisonment. First, even if it was accepted that V1 had uttered vulgarities at the appellant, there was no excuse for the appellant's actions. It was very clear that it was the appellant who had initiated the assault. He not only punched V1, but also kicked him. Second, the manner of the assault was also brutal. V1 was continuously assaulted for about four minutes. At no time did V1 retaliate. In fact, the appellant continued his assault even after V1 had fallen to the floor. It

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44 WSR at para 93.

45 WSA at p 10.

was indeed fortuitous that V1 was not more seriously hurt. Third, four other individuals, Richard, Glenn, Min Da and V2, had attempted to stop the appellant from assaulting V1, but to no avail. Instead, the appellant had threatened and hurt them. Fourth, the appellant also faced three TIC charges of a similar nature to the two proceeded charges, namely causing hurt to Richard, Glenn and Min Da.

72 As against V2, the DJ rightly took into account the fact that V2 was hurt only because he was trying to stop the appellant from assaulting V1 and gave a "marginal uplift" of four days' imprisonment.

73 The appellant did not dispute the correctness of the DJ's assessment above. Rather, he took issue with the DJ's evaluation of the mitigating factors. To my understanding, there were two key planks to the appellant's submissions in this regard. First, the appellant contended that the DJ erred in failing to give due weight to the appellant's plea of guilt and genuine remorse.[46] Second, the DJ erred in failing to give due weight to the appellant's IED, which was a major contributor to the offence.[47]

74 In my view, the mitigating factors above had been considered by the DJ. As the Prosecution pointed out, "[t]he DJ also made sure to consider the mitigating factors present and took into account the appellant's (purported) IED, plea of guilt and various testimonials". This is borne out from the GD at [69]:

> 69 Amongst the mitigating factors I took into account are as follows:
>
> (a) Mental illness. As I have alluded to earlier in these grounds, whilst the accused could be said to be

46 WSA at paras 24–51.

47 WSA at paras 52–68.

> suffering from IED, I have much doubt as how much it contributed to the offence as the presence of alcohol, in my view, also contributed towards the commission of the offence;
>
> (b) Plea of guilt. Also as alluded to earlier in these grounds, I have some doubts as to whether the accused's plea of guilty in this case demonstrated his genuine remorse. In any event, the sentencing bands under the *Low Song Chye* framework reflect the various sentencing bands where an offender has pleaded guilty. However, I had took this factor into account after determining the indicative sentence after the uplift on account of the enhanced punishment;
>
> (c) Other mitigating factors. I have considered the various testimonials that have been annexed to the plea in mitigation, including the fact that the accused has since taken up boxing competitively and has done well enough to be selected into the Singapore National Team.

[emphasis in original]

75 However, I was of the view that the DJ had given excessive weight to the three mitigating factors of the appellant's IED, plea of guilt and testimonials. In my view, there were no substantial mitigating factors in the present case.

76 First, little weight should have been placed on Dr Rajesh's IED diagnosis in the WCMR given that the DJ had accepted that alcohol consumption had contributed equally towards the commission of the offence. Without going as far as the DJ did to conclude that the contributory weight was equal, I was nonetheless satisfied (see above at [38]) that the appellant's alcohol consumption bore a strong contributory link to the offence.

77 Second, any mitigating weight for the appellant's plea of guilt was low and was in any event already subsumed within the existing and modified *Low Song Chye* framework, which was meant for plead guilty cases. It appeared that while the DJ doubted the genuineness of the appellant's remorse, he had

nonetheless given him the benefit of doubt in adjusting the sentence and factoring in a further discount on this basis. The appellant's plea of guilt by itself and his co-operation with the authorities were not strong mitigating factors. As I had noted above at [25], this was not an early guilty plea from the initial stages when the appellant's case was mentioned in the court system. More crucially, this was not a case where the Prosecution would have had any real difficulty proving the charges and where the appellant's eventual guilty plea had saved time and resources. He may have co-operated with the police after investigations had commenced. However, a conviction, whether after a plea of guilt or trial, was near-inevitable. The appellant was caught red-handed on extended CCTV footage which spoke loudly and clearly for itself. No plausible defence could have been mounted to the charges to which he pleaded guilty.

78 Third, the appellant's testimonials and sporting achievements did not carry mitigating force in terms of reducing the appellant's culpability for his offence. I was mindful that an offender's good character is most relevant where rehabilitation is the main sentencing consideration and there is no countervailing need for retribution, deterrence or prevention to feature in sentence (see *Tan Sai Tiang v Public Prosecutor* [2000] 1 SLR(R) 33; Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2nd Ed, 2019) at para 21.008). However, deterrence remained the dominant sentencing consideration here considering the serious nature of the offences. While commendable, the appellant's good character and subsequent progress after the incident, as stated in his testimonials and sporting achievements, bore no rational relationship to the offence here.

79 Finally, I make some observations on the appropriate sentencing uplift, taking into account the appellant's liability to enhanced punishment under s 35 of the CLTPA. The offence of VCH in the present case was a scheduled offence

under the Third Schedule to the CLTPA. Thus, the maximum imprisonment term prescribed by law for an offence of VCH was doubled from three to six years. The DJ considered the following uplifts to be appropriate in relation to the two charges proceeded with against the appellant:

(a) *VCH against V1*: an uplift of four weeks to the sentence of 11 weeks' imprisonment derived from the modified *Low Song Chye* framework was appropriate. This represented an uplift of roughly 36% in percentage terms.

(b) *VCH against V2*: an uplift of four days to the sentence of 11 days' imprisonment derived from the modified *Low Song Chye* framework. As with the first charge, this represented a similar uplift in percentage terms of 36%.

80 The DJ appeared to have declined to follow the Prosecution's suggestion of an uplift of one month (or roughly 25% in percentage) in relation to the VCH charge against V1 on the basis of the Prosecution's indicative sentence of four to five months under the modified *Low Song Chye* framework. It suffices for me to state that a mere 25% uplift in sentence as proposed by the Prosecution would have been inadequate in giving effect to the legislative intent in providing for the doubling of the maximum sentence in s 35 CLTPA. That being said, I was also conscious that the DJ's indicative starting point of 11 weeks' imprisonment was already below the Prosecution's proposed starting point of four to five months' imprisonment.

81 Nevertheless, as the Prosecution did not file an appeal against the sentences, I merely set out my observations above *obiter*. I declined to interfere

with the sentences imposed by the DJ even though they were lower than warranted.

Conclusion

82 For the reasons above, the appeal was without merit and was accordingly dismissed.

See Kee Oon
Judge of the High Court

Kalidass Murugaiyan and Ashvin Hariharan (Kalidass Law Corporation) for the appellant;
Nicholas Khoo and Andrew Chia (Attorney-General's Chambers) for the respondent.