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

[2025] SGHC 165

Magistrate's Appeal No 9220 of 2023

Between

Naresh Kumar s/o Nagesvaran

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Enlistment Act — Whether offence of pre-enlistee overstaying exit permit is strict liability offence]
[Criminal Procedure and Sentencing — Appeal — Appeal against conviction and sentence — Section 33(*b*) Enlistment Act (Cap 93, 2001 Rev Ed)]
[Statutory Interpretation — Construction of statute — Presumption against retrospective operation — Whether statutory defence of reasonable care intended to apply retroactively]
[Statutory Interpretation — Penal statute — Presumption of *mens rea* — Whether presumption of *mens rea* approach should be departed from]

TABLE OF CONTENTS

Naresh Kumar s/o Nagesvaran
v
Public Prosecutor

[2025] SGHC 165

General Division of the High Court — Magistrate's Appeal No 9220 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and Vincent Hoong J
19 March 2025

22 August 2025

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 After a trial in the District Court, the appellant, Mr Naresh Kumar s/o Nagesvaran, was convicted on one charge of failing to fulfil his liability by not returning to Singapore before the expiry of his exit permit, an offence under s 32(2) read with s 33(*b*) and punishable under s 33 of the Enlistment Act (Cap 93, 2001 Rev Ed) (the "EA"). The District Judge (the "DJ") sentenced the appellant to 14 weeks' imprisonment. The appellant appealed against his conviction and sentence in HC/MA 9220/2023/01 ("MA 9220").

2 MA 9220 was fixed before us as a three-judge Court of the General Division of the High Court. A young independent counsel (the "YIC") was appointed to assist in MA 9220 as the appeal raised questions of law that had potentially significant public interest implications. The questions concerned the

issues whether the abovementioned offence under the EA was a strict liability offence and, if it was, whether the statutory defence of reasonable care set out in s 26H(4) of the Penal Code 1871 (2020 Rev Ed) (the "PC") had retrospective effect for offences committed before 10 February 2020, the date that s 26H(4) came into operation.

3 Having heard the parties' and the YIC's submissions, we dismissed the appellant's appeal against his conviction and sentence. At the appellant's request, we permitted him to defer the commencement of his imprisonment until 21 March 2025.

Factual background

Factual matrix of the appellant's alleged offending

4 The appellant was born on 29 January 1997. On 29 January 2010, when he turned 13, he became a "relevant child" within the meaning of s 32(5) of the EA and was thereby subject to exit permit regulations. Section 32(5) defines a "relevant child" to mean a person who is a citizen or permanent resident of Singapore who is not less than 13 years old but less than 16 years and 6 months in age.

5 On 30 January 2010, the appellant's mother, who passed away before the trial in the District Court commenced, applied online for an exit permit for the appellant. The first exit permit (IAW8225) granted by the Ministry of Defence ("MINDEF") was valid from 30 January 2010 to 28 January 2012 ("Exit Permit 1"). During that period, the appellant resided in India.

6 The Immigration and Checkpoints Authority's ("ICA") travel movement records showed that the appellant was in Singapore from

25 December 2011 to 10 January 2012. On 3 January 2012, before the expiry of Exit Permit 1, an application was made in person at a counter in the Central Manpower Base (the "CMPB") for a second exit permit for the appellant. The appellant's involvement in that application was a matter of dispute both at the trial and before us. That application was granted and a second exit permit (EAD2273) was issued for the period 29 January 2012 to 30 September 2013 ("Exit Permit 2"). On 5 January 2012, the appellant's mother was informed by email about the success of that application.

7 While the appellant was a "relevant child", he was liable to be punished under s 32(3) of the EA which provides for a maximum fine of $2,000 and carries no custodial sentence. On 29 July 2013, the appellant ceased to be a "relevant child" within the meaning of s 32(5) of the EA, having turned 16 years and 6 months in age. The consequence was that the appellant, while still subject to exit control regulations under the EA, was now liable to be punished under s 33(*b*) of the EA as a "person subject to this Act", which is defined generally in s 2 of the EA as a person who is a citizen or a permanent resident of Singapore who is not less than 16 years and 6 months of age and not more than 40 years of age.

8 Before Exit Permit 2 was due to expire, the appellant's mother sent an email to MINDEF on 20 September 2013. In that email, she stated that she was unable to apply for an extension of Exit Permit 2 online and requested that an extension of the exit permit be granted "until April 2015" so that the appellant could complete his studies in India.

9 On 1 October 2013, the appellant failed to return to Singapore following the expiry of Exit Permit 2. As evidenced by the ICA records, the appellant left

Singapore on 10 January 2012 after Exit Permit 2 was granted and he did not return until 7 April 2019.

10 On 18 January 2014, the appellant's mother sent a handwritten letter to the CMPB enclosing various supporting documents and requesting an extension of Exit Permit 2. On 18 February 2014, a letter was sent to the CMPB with the appellant as the named sender, accompanied by a signature in the appellant's name. The authenticity of that signature was disputed by the appellant at the trial and on appeal. That letter referred to the CMPB's earlier email dated 5 February 2014 which had apparently requested supporting documents. The sender of the 18 February 2014 letter also requested an extension of Exit Permit 2.

11 On 19 May 2014, the appellant was granted a deferment of his National Service for his overseas education in India. That deferment was from 1 June 2013 until 30 April 2015. The parties disagreed on the effect of this deferment. The disagreement was over whether it also included a grant of an exit permit that entitled the appellant to remain outside Singapore until 30 April 2015 or, alternatively, whether the deferment was a waiver of the exit permit requirement for that same period.

12 On 12 May 2015, a Further Reporting Order was sent to the appellant's grandparents' address in India. On 29 May 2015, the appellant's mother emailed the CMPB to ask for an extension of Exit Permit 2. On 2 June 2015, the appellant was absent for his scheduled pre-enlistment medical screening. On 17 June 2015, the CMPB emailed the appellant's mother to inform her about this fact.

13 On 18 June 2015, the appellant's mother replied to the CMPB to ask for the appellant's National Service liability to be deferred because of her poor health. On 25 June 2015, the CMPB emailed the appellant's mother a second Further Reporting Order for the appellant to attend his re-scheduled medical screening on 15 July 2015. On 26 June 2015, the CMPB replied to the appellant's mother's email of 18 June 2015, refusing her request for the appellant's National Service obligations to be deferred.

14 The appellant's Singapore passport expired after 26 December 2017. Sometime in November 2018, the appellant sought to renew his passport in India. He received an email from the CMPB on 30 January 2019 informing him that his passport could not be renewed due to his National Service-related issues. On 11 February 2019, he was issued a document of identity for him to return to Singapore to resolve those issues.

15 On 7 April 2019, the appellant eventually returned to Singapore. He was placed under arrest.

Procedural history of the trial in the District Court

16 The appellant's trial in the District Court took place over various dates from 3 November 2022 to 17 November 2023. At the start of the trial, the appellant faced the following charge:

> You, [the appellant], are charged that you, being a person subject to the Enlistment Act (Cap 93, 2001 Rev Ed) ("Enlistment Act"), and being liable to register and thereafter having registered under the Enlistment Act, did fail to fulfil the liability under the Enlistment Act imposed on you by failing to return to Singapore from 1 October 2013 (one day after your Exit Permit expired on 30 September 2013) to 6 April 2019 (one day before you returned to Singapore), for a period of 5 years, 6 months and 6 days, when your Exit Permit valid from 29 January 2012 to 30 September 2013 issued by the Central

> Manpower Base permitting you to remain outside of Singapore for the said period had expired, and you have thereby committed an offence under s 32(2) read with s 33(b) of the Enlistment Act, which is punishable under s 33 of the Enlistment Act.

17 Four witnesses testified for the Prosecution on 3 November 2022 and 12 December 2022. The Prosecution rested its case on 12 December 2022 and the appellant indicated that he would be submitting that there was no case for him to answer.

18 On 18 May 2023, the DJ amended the charge in the exercise of his powers under s 230(1)(*g*) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"). The appellant pleaded not guilty to the amended charge on 19 May 2023. The DJ then called upon him to give his defence on the amended charge which read as follows:

> You, [the appellant], are charged that you on 1 October 2013, being a person subject to the Enlistment Act (Cap 93, 2001 Rev Ed) ("Enlistment Act"), and being liable to register under the Enlistment Act, did fail to fulfil the liability under the Enlistment Act imposed on you, by failing to return to Singapore before the expiry of the period from 29 January 2012 to 30 September 2013, which was the period the proper authority allowed you to stay outside Singapore under an Exit Permit EAD2273 issued under s 32(1) of the Enlistment Act, and you have thereby committed an offence under s 32(2) read with s 33(b) of the Enlistment Act, which is punishable under s 33 of the Enlistment Act.

19 The appellant was the only witness in his defence. He testified in court on 19 and 26 May 2023 and 11 July 2023, after which the defence rested its case. The Prosecution called a rebuttal witness who gave evidence on 12 July 2023.

20 On 4 August 2023, the DJ amended the charge a second time to remove the struck-through words from the first amended charge shown above:

> You, [the appellant], are charged that you on 1 October 2013, ~~being a person subject to the Enlistment Act (Cap 93, 2001 Rev Ed) ("Enlistment Act"), and being liable to register under the Enlistment Act,~~ did fail to fulfil the liability under the Enlistment Act imposed on you, by failing to return to Singapore before the expiry of the period from 29 January 2012 to 30 September 2013, which was the period the proper authority allowed you to stay outside Singapore under an Exit Permit EAD2273 issued under s 32(1) of the Enlistment Act, and you have thereby committed an offence under s 32(2) read with s 33(b) of the Enlistment Act, which is punishable under s 33 of the Enlistment Act.

21 The DJ indicated to the parties before the hearing that he was of the preliminary view that the struck-through words, derived from s 32(1), were not ingredients of the offence in s 32(2) of the EA. He invited the parties to make submissions at the hearing on 4 August 2023. The appellant maintained the position that the struck-through words constituted ingredients which the prosecution had to prove against him. He also submitted that the proposed amendment would prejudice him in his defence in the trial. After hearing the parties, the DJ maintained the above second amended charge and the appellant maintained his plea of not guilty.

22 On 20 September 2023, the DJ convicted the appellant on the second amended charge and delivered brief oral grounds for his decision. On 17 November 2023, he sentenced the appellant to undergo imprisonment of 14 weeks. The appellant lodged his appeal against conviction and sentence in MA 9220 that same day. The DJ issued his grounds of decision on 5 December 2023 (see *Public Prosecutor v Naresh Kumar S/O Nagesvaran* [2023] SGDC 291 (the "GD")).

The appointment of the YIC in MA 9220

23 On 19 April 2024, the YIC was appointed to address the following issues of law in MA 9220:

> **Question 1**: Is an offence under s 32(2) read with s 33(*b*) of the Enlistment Act 1970 an offence of strict liability?
>
> **Question 2**: If the answer to Question 1 is "no", what is the relevant fault element for the offence?
>
> **Question 3**: If the answer to Question 1 is "yes", is the defence under s 26H(4) of the Penal Code 1871 available in the present case, given the offending conduct took place before s 26H(4) of the Penal Code 1871 came into operation? Further to this:
>
> a. If the defence under s 26H(4) of the Penal Code 1871 is available, please consider: (a) who bears the burden of proving such a defence; (b) what is the applicable standard of proof; and (c) what must be proven for the defence to apply, particularly in cases where an offender defaults on his national service obligations.
>
> b. If the defence under s 26H(4) of the Penal Code 1871 is not available, what other defences (if any) are available to an accused person whose offending conduct predates the introduction of s 26H(4) of the Penal Code 1871?

Issues to be decided

24 Accordingly, we address the following issues at the appeal:

(a) First, whether the offence of not returning to Singapore after the expiry of an exit permit is a strict liability offence for which *mens rea* does not need to be proved?

(b) Second, whether the statutory defence of reasonable care under s 26H(4) of the PC has retrospective application to offending conduct pre-dating its coming into operation?

(c) Third, whether the common law defence of reasonable care is applicable to the EA offence in issue and, if so, what are the

ingredients that have to be proved by an accused person to make out that defence?

(d) Fourth, whether the appellant's conviction was otherwise unsafe based on the evidence?

(e) Fifth, whether the two amendments to the charge against the appellant prejudiced him in his defence at the trial?

(f) Sixth, whether the appellant's sentence was manifestly excessive?

Issue 1: Whether the offence of not returning to Singapore after the expiry of an exit permit is a strict liability offence for which *mens rea* does not need to be proved

The DJ's decision

25 The DJ found that the EA offence was one of strict liability. Applying *Gammon (Hong Kong) Ltd, Yee Chin Teo and Chak Shing Mak v Attorney-General of Hong Kong* [1985] AC 1 ("*Gammon*") and *Tan Cheng Kwee v Public Prosecutor* [2002] 2 SLR(R) 122 ("*Tan Cheng Kwee*") at [13], he held that the law recognised a presumption of *mens rea* but that presumption could be displaced by necessary implication where strict liability would promote the objects of the legislation by encouraging greater vigilance on the part of the persons concerned to prevent the commission of the prohibited act.

26 Applying that approach, the DJ found that the presumption of *mens rea* was rebutted because Parliament, recognising the importance of National Service to Singapore's defence and security, implemented the EA regime to deter potential defaulters in National Service and to ensure that pre-enlistees liable for National Service were physically present in Singapore when they were

called upon to serve. Consequently, the "weight of the public interest" in ensuring the efficacy of the EA's exit control mechanisms was sufficient in the circumstances to displace the common law presumption of *mens rea*.

The YIC's position

27 While the YIC agreed that the EA offence was one of strict liability, he submitted that the presumption of *mens rea* in *Gammon* ought to be departed from. He argued that the *Gammon* approach was liable to produce arbitrary and uncertain results, given that the question whether the presumption of *mens rea* was displaced would turn on such nebulous factors as whether the offence was "truly criminal" or merely regulatory or whether the Legislature was addressing a matter of "social concern". The invidious result was that members of the public had no reliable means of ascertaining safely, in advance, from the plain text of the offence-creating provision, whether an offence required a blameworthy state of mind.

28 Instead, the YIC proposed the alternative approach of asking whether the creation of strict liability would be consistent with the legislative purpose of the offence-creating provision, without any presumption of *mens rea*. In other words, the ordinary principles of statutory construction (namely, the purposive approach to statutory construction, as set out in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*")) would govern the question whether an offence contained any *mens rea* requirement for liability.

29 The YIC's approach would result in the EA offence being interpreted as one of strict liability, bearing in mind its legislative purpose was to strengthen the enforcement of National Service obligations on males who are liable for National Service. As exit permits are necessary to deter defaults in National

Service and to serve as a strong psychological reminder of National Service obligations, the imposition of strict liability would further that purpose by placing the burden on pre-enlistees to ensure that they are in compliance with the exit permit regime in the EA. Introducing a mental fault element would undermine the deterrent effect of that offence.

The appellant's position

30 The appellant submitted that the EA offence was not a strict liability offence. Applying the presumption of *mens rea* in *Gammon*, he argued that the EA offence did not involve any matter of "social concern" since he has served his National Service in full after committing the EA offence. There was therefore no public safety concern engaged by his conduct. Moreover, s 32(4) of the EA imposed criminal liability on parents of a "relevant child" who leaves or remains outside Singapore without an exit permit. This showed that Parliament intended to encourage vigilance on the part of parents, to the exclusion of their children, to comply with the EA.

31 The appellant also highlighted that s 32 of the EA was amended in s 11 of the Enlistment and Other Matters (Amendment) Act 2024 (No 10 of 2024) with the stated purpose that the amendment would clarify MINDEF's existing policy and legal position that exit permit offences are strict liability in nature. The appellant submitted the amendment was an admission that the pre-2024 EA, the version which was applicable to the situation here, failed to make it sufficiently clear that the offence was one of strict liability. It followed that the presumption of *mens rea* was not rebutted.

32 The appellant also argued that the relevant *mens rea* for the EA offence was that the accused person must have intended to evade the statutory

requirement of having a valid exit permit to stay outside Singapore. Alternatively, the accused person must have intentionally omitted to obtain a valid exit permit.

The Prosecution's position

33 The Prosecution largely adopted the approach of the DJ. It submitted that the presumption of *mens rea* could be displaced where the Legislature sought to regulate a matter of "social concern" and the imposition of strict liability would promote the objects of the legislation by encouraging greater vigilance to prevent the commission of the prohibited act.

34 The Prosecution argued that the efficacy of National Service, which was crucial to Singapore's defence and nation-building, was a matter of "social concern". Imposing strict liability would promote the objects of the EA by deterring violations of the exit permit rules and placing the onus of compliance upon pre-enlistees and, in the case of a "relevant child", on the parents as well.

35 In response to the YIC's submissions that the *Gammon* test should be abandoned, the Prosecution's primary position was that *Gammon*'s presumption of *mens rea* was a longstanding and entrenched part of Singapore law and ought not to be done away with. In any case, the YIC's approach of considering the text of the statutory provision and the Parliamentary intent was consistent with the approach in *Gammon*.

Our decision: the offence of not returning to Singapore after the expiry of an exit permit is a strict liability offence for which* mens rea *does not need to be proved

36 We agreed with the DJ that the EA offence was one of strict liability. We also agreed that the approach to construing penal statutes was the same as

that for interpreting any other statutory provision, namely, the purposive approach to construction set out in s 9A(1) of the Interpretation Act 1965 (2020 Rev Ed) (the "IA") and elaborated upon by the three-step test in *Tan Cheng Bock* at [37]–[38] and [54(c)].

37 In *Gammon*, the Privy Council affirmed (at 14) the following principles:

> … (1) there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is "truly criminal" in character; (3) the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute; (4) the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern, and public safety is such an issue; (5) even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.

38 The presumption of *mens rea* approach has been applied in previous cases of the High Court, including *Tan Cheng Kwee*, which held (at [13]) that:

> There is a presumption of law that *mens rea* is a necessary ingredient of any statutory provision that creates an offence … This presumption, however, can be rebutted by the clear language of the statute, or by necessary implication, although it is not sufficient if the provision merely lacks terms that are commonly associated with *mens rea*. Where an examination of the language of the statute does not assist, the court will have to look at all the relevant circumstances to determine the true intention of Parliament. Such considerations include the nature of the crime, the punishment prescribed, the absence of social obloquy, the particular mischief and the field of activity in which the crime occurred.

~~39~~ It is true that the test in *Gammon* could introduce uncertainty and ambiguity into offence-creating provisions because it may not always be immediately obvious whether an offence was truly criminal in character or

whether a statute involved an issue of social concern. It may be argued that the meaning of such classifications is too malleable for them to be used as markers of the scope of criminal liability.

40 The *Penal Code Review Committee Report* (August 2018) (the "PCRC Report") at pp 190–191 observed as follows:

> 5 It is not possible for a lay person to assess, just from reading the words of an offence, whether a court will interpret it as strict liability. Moreover, even if an offence is not found to be strict liability, it is not possible to know for certain what exact fault element the court will find it to have.
>
> 6 It is not desirable or reasonable to expect the public to wait for each such offence (and there are many such offences, many of them regulatory in nature) to be interpreted in court before they have certainty in how to comply with them. It is proposed that what strict liability is and how it works, including its applicable defences, should be codified in the Penal Code to resolve this situation.

41 The proposed solution in the PCRC Report found expression in the subsequent enactment of s 26H of the PC (see **Recommendation 63** of the PCRC Report at p 191). This was brought about (with some modifications) by s 8 of the Criminal Law Reform Act 2019 (No 15 of 2019) (the "CLRA"). The new provision in s 26H of the PC came into operation on 10 February 2020.

42 Section 26H(1) of the PC defines an offence of strict liability under the PC or any other written law as "one where, for every physical element of the offence, there is no corresponding fault element". Section 26H(2) provides that strict liability is said to apply to a particular physical element of an offence where there is no corresponding fault element for that physical element, regardless of whether or not the offence is one of strict liability. Section 26H(3) explains that an offence may be a strict liability one even though it is not so expressly described by any written law and strict liability may apply to a

particular physical element of any offence even though it is not so expressly described in any written law. Section 26H(4) states that "It is a defence for any person charged with a strict liability offence to prove that in committing all the acts or omissions that are physical elements of the offence, he exercised reasonable care".

43 If it were permissible in law to apply s 26H(1) of the PC to the case here, it may be argued that s 32(2) of the EA is an offence of strict liability because it merely provides that a person granted an exit permit "shall return to Singapore before the expiry of the period for which he was allowed to stay outside Singapore". The "physical element" of the offence is a positive duty to return to Singapore before the exit permit expires. There is no mention of any "fault element". However, as stated earlier, s 26H of the PC came into operation only on 10 February 2020, whereas the appellant's failure to return to Singapore spanned the period of 1 October 2013 to 6 April 2019. The offence would have been complete before s 26H became law. It would not be right to apply a definition promulgated by law after the completion of the offence to interpret the law governing that offence unless that law sanctions retrospective application. There is no such sanction in the said amendments to the PC.

44 It was suggested that the presumption of *mens rea* should be discarded since the present appeal in MA 9220 afforded a "fresh opportunity" for this court to "restate the principles" on strict liability. Many Singapore cases regarding the presumption of *mens rea* were High Court cases – *eg*, *Tan Cheng Kwee* at [13] and *Public Prosecutor v Phua Keng Tong and another* [1985–1986] SLR(R) 545 ("*Phua Keng Tong*") at [17]–[20]. It followed that the present court, being a General Division of the High Court, would not be bound by decisions of the same court or courts of co-ordinate jurisdiction, as Singapore does not recognise the principle of horizontal *stare decisis* (see *Attorney-*

General v Shadrake Alan [2011] 2 SLR 445 at [4], applying the rule in *Wong Hong Toy and another v Public Prosecutor* [1985–1986] SLR(R) 656 at [11]).

45 Moreover, a three-judge court of the General Division of the High Court is often described as a *de facto* Court of Appeal (see *Chew Eng Han v Public Prosecutor* [2017] 2 SLR 1130 at [49]; see also *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 at [56]–[57]). This is especially so in the case of such a three-judge court comprising two or even three Justices of the Court of Appeal. However, even though such a three-judge court's decision may be accorded the same respect as the Court of Appeal's decisions, in the hierarchy of our legal system, such a court is not the Court of Appeal and it would remain bound by decisions of the Court of Appeal.

46 The Court of Appeal held in *Public Prosecutor v Bridges Christopher* [1997] 3 SLR(R) 467 ("*Bridges*") at [45] that "*mens rea* is presumed to be a necessary ingredient of an offence in the absence of clear words to the contrary". The Court of Appeal at [45]–[46] also approved of the approach taken by the High Court in *Phua Keng Tong* which applied the presumption of *mens rea* in the context of s 5(1) of the Official Secrets Act (Cap 233, 1970 Rev Ed). Accordingly, the Court of Appeal's decision in *Bridges* remains binding on this court.

47 In any case, we do not see any contradiction between the presumption of *mens rea* expounded in the local cases and in *Gammon* and the purposive approach to statutory interpretation in s 9A(1) of the IA as explained in the three-step methodology in *Tan Cheng Bock*. In our view, *Gammon* was merely another way of applying the purposive approach in cases of genuine ambiguity within the text and context of the penal provision as to whether it contained any *mens rea* element.

48 In the recent decision of a three-judge court of the General Division of the High Court in *Dao Thi Boi v Public Prosecutor* [2024] 6 SLR 277 ("*Dao Thi Boi*"), the court was concerned with the question whether the offence of importing a scheduled species without a permit under s 4(1) of the Endangered Species (Import and Export) Act (Cap 92A, 2008 Rev Ed) included a requirement that the accused knew the nature of what he or she imported (see *Dao Thi Boi* at [7]). Applying the three-step methodology in *Tan Cheng Bock* (at [61]), the court held (at [73]) that the offence included no such mental element of offending. The court held that the legislative purpose of the offence (which was to combat the illegal wildlife trade) would be stultified if an accused person was entitled to an acquittal should the prosecution be unable to prove beyond a reasonable doubt that the accused person knew the goods being physically brought into Singapore were protected species, even if no due diligence had been undertaken to that effect (at [63]–[65] and [69]). The court stated (at [62]) that:

> The plain wording of s 4 of the ESA does not require knowledge of the nature of the thing being imported. The definition of "import" in s 2 of the ESA refers only to a physical act. While fault is presumptively a necessary ingredient of any offence-creating statutory provision, this presumption is often displaced in situations where the statutory offence in question pertains to issues of social concern or where strict liability will be effective in promoting the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act and accused persons can do something to avoid committing the offence …

49 The above analysis in *Dao Thi Boi* shows that the purposive approach to statutory interpretation and the *Gammon* approach are complementary, with the latter assisting the court in cases of genuine ambiguity where the text, context and purpose of the provision (applying *Tan Cheng Bock* at [54]) provide no clear answer to the question whether *mens rea* has to be proved by the Prosecution. In such cases, the factors listed in *Gammon* and *Tan Cheng Kwee*

may serve as tools to assist the court in arriving at the correct purposive interpretation of the statutory provision. However, in most cases, the *Tan Cheng Bock* framework will suffice to arrive at a clear answer.

50 In the present case, the purposive interpretation of s 32(2) of the EA led clearly to the conclusion that Parliament intended this offence to be an offence of strict liability. We first consider the possible interpretations of s 32(2) of the EA in conjunction with the punishment provision in s 33(*b*). These provisions read as follows:

> **Exit permits**
>
> **32.**—(1) A person subject to this Act who has been registered under section 3 or is deemed to be registered or is liable to register under this Act, or a relevant child, shall not leave Singapore or remain outside Singapore unless he is in possession of a valid permit (referred to in this Act as exit permit) issued by the proper authority permitting him to do so.
>
> (2) A person to whom an exit permit under subsection (1) is granted shall return to Singapore before the expiry of the period for which he was allowed to stay outside Singapore.
>
> (3) Any relevant child within or outside Singapore who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.
>
> (4) Where any relevant child contravenes subsection (1) or (2), each parent within or outside Singapore of the relevant child shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.
>
> (5) In this section –
>
> > "parent", in relation to a relevant child, includes a guardian and any person having the actual custody of the relevant child;
> >
> > "relevant child" means a person who is a citizen or permanent resident of Singapore and who is not less than 13 years of age but less than 16 years and 6 months of age.
>
> **Offences**

> **33.** Except as provided in section 32(3) and (4), any person within or outside Singapore who —
>
> [Section 33(*a*) omitted]
>
> (*b*) fails to fulfil any liability imposed on him under this Act;
>
> [Sections 33(*c*)–(*f*) omitted]
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

51 It is plain from the text of s 32(2) that it contains no requirement that the "person" must know that he was not permitted to "stay outside Singapore" without a valid exit permit or that he must know that his exit permit has expired. The offence is complete once the person in question fails to return to Singapore before the expiry of the exit permit and thereby "fails to fulfil any liability" imposed by the EA. This is the natural and ordinary meaning of the text and context of s 32(2).

52 We did not accept the appellant's contention that s 32(2) requires the Prosecution to prove that an accused person intended to contravene the requirement to have a valid exit permit to remain outside Singapore. In so far as the appellant was suggesting that an accused needed to know that he was required by law to have an exit permit, that would contravene the accepted common law principle that ignorance of the law does not excuse, as recognised in *Chee Soon Juan and others v Public Prosecutor* [2012] 3 SLR 648 at [52] and *Public Prosecutor v Tan Seo Whatt Albert and another appeal* [2019] 5 SLR 654 at [38] (and now codified in s 79A(1) of the PC, which came into operation after the appellant's offending).

53 We are fortified in our view of s 32(2) of the EA by the purpose it serves in Singapore's National Service scheme. In his Ministerial Statement on the

Enlistment (Amendment) Act 2006 (No 14 of 2006) (the "2006 Act"), then Minister for Defence Mr Teo Chee Hean stated (see *Singapore Parliamentary Debates, Official Report* (16 January 2006) vol 80 at col 2004):

> National Service was introduced 38 years ago in 1967, soon after we became independent. National Service fulfilled a critical need – we had to defend ourselves. It was a matter of survival. As a small country with a small population, the only way we could build a force of sufficient size to defend ourselves was through conscription. It was a decision not taken lightly given the significant impact that conscription would have on every Singaporean. But there was no alternative.

54 The Minister explained that National Service was underpinned by three fundamental principles:

> … The first is that National Service must be for meeting a critical national need – for it requires considerable cost both to the individual and to the nation. That critical need is national security and our survival. …
>
> The second fundamental principle of our National Service is universality. All young Singaporean males who are fit to serve are conscripted. If we have a system in which some are conscripted but others are not, there will be strong feelings of unfairness which will undermine the commitment of our NSmen. …
>
> The third fundamental principle of our National Service is equity. Everyone has to be treated in the same way, regardless of background or status. His deployment in NS is determined by where he is most needed to meet the needs of the national defence.

55 In line with these fundamental principles, in particular, the principle of universality, defaulting in National Service obligations must be deterred. For this reason, the exit control regime in the EA buttresses the enforcement of National Service liabilities upon pre-enlistees. In the Second Reading speech for the 2006 Act, which doubled the fine prescribed in s 33 of the EA (see s 4 of the 2006 Act) and extended exit permit requirements to a "relevant child" under 16 years and 6 months of age (see s 3 of the 2006 Act), the then Second

Minister for Defence Dr Ng Eng Hen explained the rationale for exit control regulations (see *Singapore Parliamentary Debates, Official Report* (3 April 2006) vol 81 ("Second Reading") at col 1750):

> To reduce costs for pre-enlistees, MINDEF has decided to allow pre-enlistees to have passports of the normal full validity period. However, as exit controls are still necessary to deter potential NS defaulters and to serve as a strong psychological reminder of their NS obligation, MINDEF will require pre-enlistees aged 13 to 16 1/2 to apply for Exit Permits if they intend to be away from Singapore for three months or more. Those who require Exit Permits of two years or more will be required to furnish a bond. This is similar to the current arrangement where a bond is required if the pre-enlistee requires a passport validity of more than two years. There will be no change to the Exit Permit and bonding requirements for pre-enlistees aged 16 1/2 till enlistment.

56 Given the vital importance of National Service to Singapore's national security and survival, coupled with the role of the exit permit regime, reading a *mens rea* requirement into the EA offence would undermine the deterrent effect of ss 32(2) r/w 33(*b*) of the EA. Therefore, the interpretation of ss 32(2) r/w 33(*b*) of the EA as a strict liability offence is the only permissible and proper reading of the provisions under the first step of the *Tan Cheng Bock* framework. As reiterated in *Gammon*, the presumption of *mens rea* is displaced where "the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act". Implying a *mens rea* ingredient into the EA offence here would have been inconsistent with its deterrent legislative purpose.

57 For all these reasons, we hold that ss 32(2) p/u 33(*b*) of the EA is a strict liability offence. To establish the commission of this offence, the Prosecution only needs to prove that – (1) the accused person was granted an exit permit under s 32(1) of the EA; (2) the exit permit has expired; and (3) the accused person failed to return to Singapore before the expiry of that permit.

58 In the present case, the Prosecution has proved beyond reasonable doubt that Exit Permit 2 was granted to the appellant, it was valid until 30 September 2013 and it has already expired. From the ICA travel movement records, it was clear that the appellant failed to return to Singapore by 30 September 2013. He returned only years later. It follows that the Prosecution has proved the charge against the appellant.

Issue 2: Whether the statutory defence of reasonable care in s 26H(4) of the PC has retrospective application

The DJ's decision

59 The DJ applied the statutory defence of reasonable care in s 26H(4) of the PC and considered whether the appellant had established the statutory defence on a balance of probabilities. His decision was based on the parties having submitted that the said statutory defence applied to the appellant's case. Section 26H(4) provides:

> It is a defence for any person charged with a strict liability offence to prove that in committing all the acts or omissions that are physical elements of the offence, he exercised reasonable care.

The YIC's position

60 The YIC submitted that s 26H(4) of the PC did not apply retrospectively to the appellant's offending conduct since it took place before s 26H(4) came into operation. The YIC observed that the intention behind the enactment of s 26H (and the other fault element provisions in the PC) was to codify existing common law principles. There was nothing in the text of the CLRA which suggested that s 26H was intended to apply retroactively.

The appellant's position

61 The appellant acknowledged that his conduct pre-dated the coming into operation of s 26H(4) of the PC and that nothing in the language of s 26H of the PC indicated that the provision was meant to have retrospective effect. However, some portions of his written submissions appeared to suggest that s 26H(4) applied to his case.

The Prosecution's position

62 The Prosecution agreed with the YIC that s 26H of the PC did not apply retrospectively. It acknowledged that the parties had submitted before the DJ on the basis that s 26H of the PC was applicable.

Our decision: s 26H(4) of the PC has no retrospective application

63 For the same reason that we decided that s 26H(1) of the PC could not apply to this case, we agree that s 26H(4) of the PC was not intended to have retrospective application to offending conduct prior to 10 February 2020, the date s 26H became law. Both sub-sections pertain to the concept of strict liability and s 26H(4) is a follow-up to s 26H(1) in that s 26H(4) specifies a defence for a strict liability offence as defined in s 26H(1). It could not be right to hold that a follow-up subsection applies retrospectively but the preceding related subsection does not, unless there are clear words in the statute permitting such an interpretation. As stated earlier, the parties and the YIC accepted that there are no such clear words here.

64 Further, the purpose of s 8 of the CLRA was to codify the common law position on fault elements of offences, such as intention, knowledge and strict liability. At the Second Reading for the CLRA, the then Senior Parliamentary

Secretary to the Minister for Home Affairs, Mr Amrin Amin, said the following (see *Singapore Parliamentary Debates, Official Report* (6 May 2019) vol 94):

> The Bill codifies the definitions of fault elements such as intention, knowledge and dishonesty. These definitions crystallise and clarify the existing case law. We wanted to make the law clearer since most of these definitions apply to offences outside the Penal Code as well. Clauses 7 and 8 deal with these.

65 In the PCRC Report, **Recommendation 63** (at pp 191–192) "recommends codifying the definition of 'strict liability'" with the wording in ss 26H(1)–(2) of the PC (with some modifications). In relation to the statutory defence of reasonable care in s 26H(4), the PCRC Report explained that this "reflects the common law position in *Chng Wei Meng* and *M V Balakrishnan*".

66 Given that the purpose of s 8 of the CLRA was to codify rather than to amend the pre-existing common law position, that would militate against any intention for s 26H of the PC to have retroactive effect. We therefore hold that the statutory defence in s 26H(4) has no application to offending conduct that took place before 10 February 2020, the date s 26H(4) became law.

Issue 3: Whether the appellant was entitled to invoke the common law defence of reasonable care

The DJ's decision

67 Relying on *Chng Wei Meng v Public Prosecutor* [2002] 2 SLR(R) 566 ("*Chng Wei Meng*"), the DJ held that the burden was on the appellant to show, on a balance of probabilities, that he exercised reasonable care to avoid committing the offence. The DJ found that the appellant could invoke the defence successfully if he showed (a) that he had diligently taken active steps to apply for an exit permit allowing him to remain outside Singapore beyond 30 September 2013; (b) he had taken active steps to return to Singapore before

1 October 2013 or (c) he had an honest or reasonable belief that he could remain outside Singapore even after Exit Permit 2 had expired.

68 However, the appellant failed to make out any of these facts. He did not manage to obtain a third exit permit to remain outside Singapore past the expiry date of Exit Permit 2. While attempts were made in his 18 February 2014 letter to make such an application (which was after Exit Permit 2 had expired anyway), no exit permit was obtained and it was incumbent on the appellant to return to Singapore before Exit Permit 2 expired. Likewise, there was no evidence to suggest that the appellant had taken any active steps to return to Singapore before 1 October 2013. In fact, the clear evidence was that the appellant took no such steps at all and only returned to Singapore on 7 April 2019.

69 Finally, the appellant had no honest or reasonable belief that he could remain outside Singapore without a valid exit permit, given that he was a Singapore citizen and showed a lack of reasonable effort to find out the responsibilities of a male Singaporean citizen. The DJ found that the appellant was involved in the over-the-counter application for Exit Permit 2 at the CMPB with his uncle in January 2012 and was put on notice from then on about the need for an exit permit to remain outside Singapore. Accordingly, the DJ rejected the appellant's defence of reasonable care. However, as mentioned earlier, the DJ was applying s 26H(4) of the PC when he considered this defence.

The YIC's position

70 The YIC submitted that the appellant was entitled to invoke the common law defence of reasonable care and that the appellant bore the burden of proof to make out this defence on a balance of probabilities. However, the YIC

departed slightly from the DJ's approach. In his view, it was no defence for the appellant to show he had an honest belief that he could remain overseas without a valid exit permit because an honest belief would not suffice to evade liability for a strict liability offence (relying on *Public Prosecutor v Jurong Country Club and another appeal* [2019] 5 SLR 554 at [101]). The defence is assessed on an objective, and not a subjective, standard of what constitutes reasonable care.

The appellant's position

71 The appellant accepted that the burden was on him to prove the defence of reasonable care on a balance of probabilities. However, he argued that the "question of whether reasonable care was exercised can only be assumed in the context of the Appellant having knowledge of his EA obligations". In other words, the appellant suggested that it would suffice if he exercised reasonable care to comply with the EA once he learnt of the need to have an exit permit to remain outside Singapore under the EA. His defence was that he had no knowledge of his EA obligations until November or December 2018 and he made all reasonable efforts to return to Singapore after he learnt of his National Service obligations. Therefore, he is entitled to the defence of reasonable care.

The Prosecution's position

72 The Prosecution adopted the position taken by the DJ. None of the three grounds to establish this defence was made out for the reasons stated in the GD. First, the appellant's own defence was that he was unaware of his EA obligations and therefore did not apply personally for a third exit permit. The appellant could not have had any honest or reasonable belief that he could remain outside Singapore because he was a Singapore citizen but took no steps to find out his responsibilities and liabilities as a male Singapore citizen liable

for National Service. Further, he went with his uncle to the CMPB to make an in-person application for Exit Permit 2 and that put him on notice of the relevant exit permit rules since at least 3 January 2012. The defence of reasonable care therefore could not succeed.

Our decision: the appellant was entitled to invoke the common law defence of reasonable care but failed to prove the defence on a balance of probabilities

73 Although s 26H(4) of the Penal Code has no retrospective operation, it codified the pre-existing common law defence of reasonable care for strict liability offences. The requirements of that defence were set out in the High Court case of *M V Balakrishnan v Public Prosecutor* [1998] SGHC 169 ("*Balakrishnan*"). That case concerned the offence of permitting an employee to use a Class 4 motor vehicle without a valid driving licence under the Road Traffic Act (Cap 276, 1994 Rev Ed). The accused's defence was that he knew the employee in question held a Class 3 driving licence and no Class 4 driving licence but did not realise that the lorry was a Class 4 vehicle. He purportedly relied on a sales representative's statement to him that the lorry was a Class 3 vehicle (see *Balakrishnan* at [3]).

74 The court held that the onus was on the accused to show he had exercised reasonable care. On the facts, the defence failed because it was not reasonable for the accused to rely solely on the sales representative "when other means of knowledge, for example, the vehicle logbook, were available". The court held that the accused "had the means to take reasonable care to prevent his employee from carrying out the prohibited act but failed to exercise those means".

75 Accordingly, to invoke the common law defence of reasonable care, the appellant here must prove that he exercised reasonable care to avoid failing to

return to Singapore before the expiry of Exit Permit 2 which allowed him to stay outside Singapore from 29 January 2012 to 30 September 2013. If he can do so, he would also have shown that he took reasonable care to avoid not fulfilling his EA liability because, as specified in the charge, he failed to fulfil his EA liability by failing to return to Singapore before the expiry of Exit Permit 2.

76 In essence, the appellant's defence was that he "had no knowledge until November / December 2018 of his EA obligations". He submitted that his evidence that "he only knew of his EA obligations in November / December 2018 [was] both credible and uncontradicted".

77 The appellant's defence meant that he was ignorant of the fact that he was legally required to have an exit permit in the first place to remain outside Singapore. He asserted in his statements given during the investigations that he was ignorant of his EA and National Service obligations until he faced issues renewing his passport in November 2018 and that he only learnt of these obligations in "late 2018" and around "Dec 2018". It followed that he would not have made any effort whatsoever to apply for another exit permit before Exit Permit 2 expired on 1 October 2013, more than five years before he purportedly learnt about his National Service obligations.

78 In our view, such ignorance is not capable of providing a defence of reasonable care. It is as good as saying that the appellant was ignorant of the law set out in the EA and therefore could not have intended to breach it. We have already highlighted earlier that ignorance of the law cannot be a defence.

79 In any event, the DJ found that the appellant was aware before November or December of 2018 of his EA obligations and of the need to have a valid exit permit. The DJ considered the appellant's denial that he signed the

18 February 2014 letter to MINDEF requesting an extension of Exit Permit 2. The DJ rejected the appellant's attempts to distance himself from that letter, holding that the appellant's denial that the signature was his was "hardly believable". There was no evidence that could suggest that the signature on the 18 February 2014 letter was forged. There would have been no conceivable reason for the appellant's mother to do so since she had sent a handwritten letter dated 18 January 2014 to MINDEF in her own name and signed it herself. The DJ also observed the apparent similarities between the disputed signature and the admitted signatures of the appellant on other documents.

80 Further, as we observed in our brief oral grounds at the hearing of this appeal, the appellant produced no evidence from any handwriting expert to support his claim that his signature had been forged. We therefore do not find the DJ's holding on this issue to be plainly wrong or against the weight of the evidence.

81 In any case, the 18 February 2014 letter was sent to MINDEF some months after Exit Permit 2 expired on 1 October 2013. Any application for an extension of the exit permit ought to have been made before its expiry. While the appellant's mother did send an email to the CMPB on 20 September 2013 to seek such an extension, it was not disputed that her request was not granted.

82 The DJ also considered the earlier time frame when the application for Exit Permit 2 was made in person over the counter at the CMPB on 3 January 2012. The DJ disbelieved the appellant's evidence that he was not aware that his uncle was taking him to the CMPB to apply for an exit permit and that he was asked to sit on a path outside the CMPB gates while his uncle conducted some activities at the counter, thereby causing the appellant to be ignorant of

the purpose of their visit there. The DJ described such evidence as "incredible" and "completely unbelievable".

83 We agreed with the DJ. The appellant's assertions of ignorance and total non-involvement in the application for Exit Permit 2 were self-serving and illogical. The appellant was almost 15 years' old by that time. He had been contributing to his household income by conducting tuition lessons for some children since he was about 13 years' old. He must therefore have had achieved some level of maturity by the time he returned to Singapore. He had returned to Singapore for a short trip of about 17 days between 25 December 2011 and 10 January 2012. It would be highly unusual for his uncle to bring him along to the CMPB and then leave him outside the gates while his uncle handled the application at the counter, especially when the application was all about the appellant. Further, it would be extremely strange that his uncle did not even tell him why they were at the CMPB and he did not ask his uncle about the purpose of that visit even up to the day of his testimony in court. This was despite the fact that he was still staying with his uncle during the trial. The appellant also did not call his uncle as his witness to support his evidence about the visit to the CMPB.

84 The appellant's assertions about the visit to the CMPB were also inconsistent with the evidence of PW2 Mdm Yum Kah Leng ("Mdm Yum"), a senior manager of the deferment section in the CMPB. She gave evidence that for such over-the-counter applications for exit permits at the CMPB, the verification of the pre-enlistee's identity with his identity card or passport at the counter was part of the process. This was corroborated by the evidence of the CMPB counter staff, PW3 Mdm Siow Eng Lan ("Mdm Siow"). Their evidence made it all the more improbable that the appellant remained outside the CMPB gates and had no involvement whatsoever in the application for Exit Permit 2.

85 It followed from the above findings that the appellant was not, in fact, ignorant about the legal requirement to have an exit permit to remain outside Singapore. He would have been aware of that legal requirement by 3 January 2012 when he accompanied his uncle to make the application for Exit Permit 2 at the CMPB. He would also have been aware that Exit Permit 2 was valid until 30 September 2013.

86 As a result of the appellant's claim that he knew nothing about his EA liability until late 2018, no evidence was adduced about his efforts to return to Singapore before the expiration of Exit Permit 2. There was therefore absolutely no evidence to support a possible defence of having taken reasonable care to avoid the offence of failing to return to Singapore before the expiry of Exit Permit 2.

87 Just by way of illustration, such a defence could conceivably be established by evidence that the appellant could not return to Singapore in time despite his best efforts because he fell ill and could not travel. The defence could also possibly succeed if the appellant proved that there was a travel ban in the place where he was located at the material time or because all flights were grounded on account of war or of extreme weather. In such situations, a person subject to EA liabilities would still have to show that he returned as soon as possible after the impediments to return to Singapore ceased.

88 For completeness, since the YIC considered the statutory defence of mistake in s 79 of the PC (which was in force on 1 October 2013 when Exit Permit 2 expired and the appellant failed to return to Singapore), we note that the appellant did not raise this defence. In any case, the defence of mistake in s 79 did not extend to mistakes of law but only to mistakes of fact. The wording of s 79 (as at 1 October 2013) stated that "[n]othing is an offence which is done

by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it". That same principle is now encapsulated in s 79A(1) of the current PC. It was therefore irrelevant even if the appellant was mistaken that he did not need an exit permit to remain outside Singapore because that would be a mistake of law.

89 For all these reasons, we were satisfied that the appellant had no valid defence to the charge.

Issue 4: Whether the appellant's conviction was otherwise unsafe based on the evidence

The appellant's position

90 The appellant submitted that he was granted a deferment of National Service on 19 May 2014 for his overseas studies until 30 April 2015. It appeared from his submissions that he was asserting that the deferment either operated to grant him permission to remain outside Singapore until 30 April 2015 as if it were an exit permit or that it served to waive the requirement that he needed an exit permit to remain out of Singapore. This was because the wording in the deferment document stated "without Bond/EP" (Exhibit P12). It was only in the appellant's oral submissions that he clarified that his contention was that the grant of the overseas deferment operated as an exemption of his liability to have an exit permit by the proper authority within the meaning of s 29 of the EA.

91 The appellant also argued that he was granted Exit Permit 2 in his capacity as a "relevant child" but he had ceased to hold that capacity when the offence was committed on 1 October 2013. On that date, he had become a "person subject to the Act" (which is the EA) (see ss 2, 32(1) and 32(5) of the

EA). The appellant submitted that he could not be punished as a "person subject to" the EA (s 33(*b*) of the EA) when he received Exit Permit 2 as a "relevant child" (who would be subject to only a fine in s 32(3) of the EA). He argued therefore that the present charge framed under s 33(*b*) of the EA was defective.

92 Finally, the appellant cited the United Nations Convention on the Rights of the Child (adopted on 20 November 1989) (the "UNCRC") and contended that, as a minor at the time of offending, criminalising his conduct when he lacked sufficient maturity to understand his legal obligations under the EA would go against Singapore's treaty obligations under Art 3(2) of the UNCRC to care for his "well-being". The appellant suggested that s 32(4) of the EA, which imposes criminal liability on the parents of a "relevant child", was an implementation of Singapore's international obligations under the UNCRC. The result was that the appellant could not be held liable for the offence stated in the charge.

The Prosecution's position

93 The Prosecution argued that the appellant had conflated a deferment of his National Service liability with the grant of an exit permit to remain outside Singapore for an extended period. Mdm Yum gave clear evidence at the trial that these were distinct matters and, in any event, P12 was an internal document within MINDEF which was never provided to the appellant or his mother. Therefore, it could not have contributed to his belief that he was permitted to remain in India without an exit permit.

94 Second, the charged offence crystallised on 1 October 2013, when Exit Permit 2 had expired. By that time, the appellant was older than 16 years and 6 months of age and was therefore no longer a "relevant child" as defined in

s 32(5) of the EA. The plain wording of s 32(3) of the EA made it clear that that was not the applicable punishment provision for his offence.

95 The Prosecution rejected the appellant's argument based on the UNCRC that it would be manifestly unjust or erroneous to punish him as a "person subject to" the EA for an offence which had its genesis when the appellant was a "relevant child". During the time that the appellant was a "relevant child", no offence was committed. Section 32(3) of the EA penalises pre-enlistees between 13 years old and 16 years and 6 months old but caters for their youthfulness by limiting criminal liability to exit permit offences and by prescribing only a fine as punishment. In any case, the relevant law to consider was the EA and not the UNCRC because treaty obligations only became law if Parliament enacted the relevant legislation to implement the treaty obligations.

Our decision: there was no reason to interfere with the appellant's conviction

96 The deferment granted in P12 was not a grant of an exit permit nor did it exempt the appellant from the requirement to have an exit permit under s 32 of the EA. Mdm Yum testified that these were separate and distinct matters. In respect of P12, she testified that:

> A This---this is a record in our system that shows he---Naresh was granted oversea deferment. Is approved on 19th May 2014. And the apply status is under "approved" under "for overseas study (without bond/exit permit)".
>
> And it's for his study in India. That course commenced on 1st June 2013 and completion date of the course is 30th April 2015.
>
> Q Alright, so, Mdm Yum, what are the implications of this overseas deferment application being approved?
>
> …

> A He's allowed to study overseas and because the deferment is approved for his studies, till April 2015, but there's no bond, the EP that issued to him. That means to say, he has to come back every 3 months because EP is required if you are staying overseas for 3 months and longer. So, since the EP is not issued to him and it's without bond, then he have to come back every 3 months.
>
> …
>
> Q Alright. And that's because there was no exit permit?
>
> A No bond was furnished and that's why there's no exit permit being issued to him.

97 The appellant argued that nothing on the face of P12 suggested that the appellant had to return to Singapore every 3 months if he did not have an exit permit. We noted that P12 was MINDEF's internal document and it was not sent to the appellant or to his mother. There was therefore no need to spell out in P12 the requirement that the appellant had to return to Singapore every 3 months unless he had a valid exit permit to remain outside Singapore.

98 Mdm Yum also explained that for pre-enlistees older than 16 years and 6 months of age, like the appellant, a bond was required if they wanted an exit permit to remain outside Singapore for 3 months or more. Her testimony was corroborated by Mdm Siow who testified that "bond is needed if they [the pre-enlistee of 16 years and 6 months of age or older] are still remain outside Singapore more than 3 months for the next application of the exit permit".

99 In addition, in the Second Reading speech on the 2006 Act, the then Second Minister for Defence Dr Ng Eng Hen stated the following:

> Currently, pre-enlistees from age 11 till 16 1/2 are issued passports that are valid for only two years at a time. If they require passports of extended validity, ie, more than two years, their parents will have to furnish a bond as a guarantee that they will return to fulfil their NS obligations. The bond quantum

> is $75,000 or half the combined annual income of both parents, whichever is higher.
>
> From age 16 1/2 till enlistment, the exit control is tighter. Passport validity is restricted to only one year at a time and those going overseas for three months or longer will have to apply for Exit Permits under the Enlistment Act. They are also required to furnish a bond of the same quantum as applicable to those below 16 1/2, ie, $75,000 or half the combined annual income of both parents, whichever is higher.
>
> …
>
> … Those who require Exit Permits of two years or more will be required to furnish a bond. This is similar to the current arrangement where a bond is required if the pre-enlistee requires a passport validity of more than two years. There will be no change to the Exit Permit and bonding requirements for pre-enlistees aged 16 1/2 till enlistment.

100 In the circumstances, there was simply no basis for the appellant's argument that the overseas deferment granted in P12 operated to exempt him from the requirement of having an exit permit to remain in India. He was not granted an exit permit as no bond was furnished. In the absence of such an exit permit, he was not permitted to remain outside Singapore. Even if the appellant was correct in his contention that the deferment allowed him to remain outside Singapore, he did not return to Singapore by the end of the deferment on 30 April 2015 anyway.

101 The appellant also submitted that the charge was defective because he did not retain the same status of a "relevant child" or a "person subject to" the EA from the time he was granted Exit Permit 2 to the date when he remained out of Singapore after the expiry of Exit Permit 2. The DJ observed that the plain wording of s 32(2) of the EA did not require an offender who infringed s 32(2) to remain at the same status from the time of issue of the exit permit to the time of infringement.

102 We agreed with the DJ and disagreed with the appellant. A person in the position of the appellant, who was granted an exit permit when he was a "relevant child" (between 13 years of age and less than 16 years and 6 months of age) and who subsequently became a "person subject to" the EA (being between 16 years and 6 months of age and 40 years of age) when he committed the offence on 1 October 2013, would be punished based on his age at the time of offending. Section 32(3) of the EA provides that any "relevant child" who contravenes ss 32(1) or 32(2) shall be liable to a fine not exceeding $2,000. Section 33(*b*) provides that, except as provided in ss 32(3) and (4) (the "relevant child" provisions), "any person within or outside Singapore who … fails to fulfil any liability imposed on him under this Act" shall be liable to a fine not exceeding $10,000 or to imprisonment not exceeding 3 years or to both. The appellant's failure to return to Singapore took place on 1 October 2013 and remained a continuing offence until his return on 7 April 2019. As at 1 October 2013, the appellant was about 16 years and 8 months old. He was obviously not a "relevant child" by then. He was therefore liable to be punished as a "person subject to" the EA under s 33(*b*).

103 In relation to the appellant's contentions based on the UNCRC, we agreed with the Prosecution's submissions. As explained above, factually, the appellant committed the offence not as a "relevant child" but only as a person subject to the EA from the time he was about 16 years and 8 months old. Legally, while treaty obligations may be relevant in aiding statutory interpretation (see *Yong Vui Kong v Public Prosecutor and another matter* [2010] 3 SLR 489 at [59]), they do not override "clear and unambiguous" domestic legislation (see *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [50]–[53]) or the "plain language" of domestic law (see *Nagaenthran a/l K Dharmalingam v Attorney-General and another matter* [2022] 2 SLR 211

at [57]–[58]). In any case, bearing in mind the importance of National Service to Singapore and the very restricted parameters of criminal liability in s 32(3) of the EA, we see no possible contradiction between this statutory provision and the UNCRC.

104 Accordingly, we found no grounds for us to set aside the appellant's conviction.

Issue 5: Whether the appellant was prejudiced in his defence by the amendments to the charge

The DJ's reasons for his amendments

105 The amendments made by the DJ on 18 May 2023 and 4 August 2023 were intended to remove extraneous elements in the charge which were not the ingredients of an offence under s 32(2) of the EA. The first amendment on 18 May 2023 was made before the appellant was called upon to give his defence. The DJ abided by the procedure in ss 128–131 of the CPC which included the taking of the appellant's plea to the amended charge and flagging the possible recalling of witnesses. A short standdown was granted to the appellant to give instructions to his defence counsel on the amended charge.

106 The second amendment made on 4 August 2023 was after the appellant had given his defence. The DJ noted that the amendments merely removed the references to the appellant being a person subject to the EA and liable to register under the EA as these were not necessary elements of the offence under s 32(2) of the EA. The factual case against the appellant did not change and it would not impact his same or substantially similar defence to that factual case. To the extent that new evidence may be required for the appellant's defence, there were safeguards in ss 128–131 of the CPC against possible prejudice.

The appellant's position

107 The appellant provided a range of reasons why he was prejudiced by the amendments to the charge. They included the contention that the investigations were based on the premise that the appellant was at all times a person subject to the EA even when he was below the age of 16 years and 6 months at the relevant time. As a result, "no investigations were conducted to establish the mindset of the Appellant as a relevant child and as a person subject to the EA in connection with his mindset and knowledge in respect of his obligations under the EA at various points when he lived in India under the supervision of his grandparents and mother". Further, it was clear that "there were a number of witnesses from CMPB associated with many of the documents and communications who were not called as witnesses". The appellant also submitted that it was only in the course of the trial that the Prosecution addressed the issue of whether the relevant EA provisions were strict liability offences. He contended that the "numerous amendments to the charge (with one withdrawal of an application to amend by the Prosecution) given the dismal state of evidence, inadequate investigations and the very late positions taken on whether the relevant provisions of the EA were strict liability and if so, whether the defence of reasonable care applied" prejudiced him in his defence.

The Prosecution's position

108 The Prosecution argued that the factual case alleged against the appellant remained exactly the same throughout the entire course of the trial. The case was that the appellant was issued Exit Permit 2 which expired on 30 September 2013 and he failed to return to Singapore by that date. The amendments to the charge concerned the removal of legal elements which had no bearing on the appellant's defence of ignorance of his EA obligations until

November or December 2018. Accordingly, the amendments did not prejudice the appellant at the trial.

Our decision: the appellant was not prejudiced by the amendments to the charge

109 Under s 128(1) of the CPC, a trial judge has the discretion to amend a charge "at any time before judgment is given". This is subject to certain safeguards, including the requirements that the amended charge has to be read and explained to the accused person (see s 128(2) of the CPC) and the court has to take the accused person's plea to the amended charge (see s 129(1) of the CPC). The general consideration is whether the accused person would be prejudiced in his defence at the trial by the amendment (see *Public Prosecutor v Tan Khee Wan Iris* [1994] 3 SLR(R) 168 at [7] and *Addy Amin bin Mohamed v Public Prosecutor* [2016] 5 SLR 801 at [36]).

110 In relation to the amendment made on 18 May 2023, there could be no prejudice to the appellant as he had not been called upon to give his defence. The first amended charge was read to him. There was no factual change in the Prosecution's case. The DJ called upon the appellant to give his defence on 19 May 2023 and he indicated his wish to testify.

111 In so far as the amendment to the charge on 4 August 2023 was concerned, we agree that the factual case against the appellant remained the same. The essence of the Prosecution's case was that Exit Permit 2 was granted to the appellant for a specified period, it expired after 30 September 2013 and the appellant failed to return to Singapore by that date. The allegations of fact in the Prosecution's case did not change and neither did its evidence and witnesses. The appellant's defence of ignorance of his EA obligations until

November or December 2018 was not prejudiced in any way by the removal of unnecessary legal elements from the charge.

112 For these reasons, we rejected the appellant's contention that he was prejudiced by the DJ's amendments to the charge. Clearly, there was no prejudice.

Issue 6: Whether the appellant's sentence was manifestly excessive

The DJ's decision

113 The punishment provided by s 32(2) read with s 33(*b*) of the EA is a fine not exceeding $10,000 or imprisonment not exceeding 3 years or both. The DJ sentenced the appellant to imprisonment of 14 weeks.

114 In arriving at this sentence, the DJ applied the High Court of 3 Judges' sentencing framework in *Public Prosecutor v Sakthikanesh s/o Chidambaram and other appeals and another matter* [2017] 5 SLR 707 ("*Sakthikanesh*"). The starting point was the appellant's period of absence from Singapore. The period of absence was 5 years, 6 months and 6 days. This fell within the upper end of Peg 1 of *Sakthikanesh*, which has an indicative sentence of 2 to 4 months' imprisonment for periods of default of 2 to 6 years. Applying the guidelines in the sentencing framework, the DJ increased the starting point of the imprisonment term of 2 months by half a month for each additional year of the appellant's absence. The additional years of absence beyond 2 years for the appellant's case were 3.5 years. On the basis that one month contains 4 weeks, that would amount to a further 7 weeks' imprisonment (3.5 x 2 weeks). Adding 7 weeks to the starting point of 2 months (or 8 weeks), the total would be 15 weeks. However, the DJ ameliorated it to 14 weeks' imprisonment.

115 The DJ found no relevant aggravating or mitigating factors. As the appellant had claimed trial, a discount in sentence was not warranted. The DJ held the view that the fact that the appellant had since returned to Singapore and served his National Service was not a significant factor in sentencing. This was because the High Court in *Sakthikanesh* did not refer to this factor when it applied the sentencing framework to determine the sentences for two of the National Service defaulters in that case. The final sentence imposed by the DJ was therefore 14 weeks' imprisonment.

The appellant's position

116 The appellant argued that his sentence was manifestly excessive. First, he sought to distinguish *Sakthikanesh* on a number of factual points. These included the facts that he was granted a deferment of National Service for his overseas studies and that he lacked any substantial connections to Singapore.

117 The appellant also relied on his difficult family circumstances in India. His father had abandoned the family and he had to care for his cancer-stricken mother who passed away shortly after his return to Singapore. He discontinued his tertiary education and returned to Singapore on his own volition to serve National Service after finding out about his EA obligations. The appellant urged the Court to consider his case on compassionate grounds and as an exceptional case warranting only a fine as punishment.

The Prosecution's position

118 The Prosecution agreed with the DJ's analysis and application of *Sakthikanesh*. It agreed that the starting point sentence for a default period of 5 years, 6 months and 6 days was 14 weeks' imprisonment and that there were no grounds to depart from that starting point on the facts here.

Our decision: the appellant's sentence was not manifestly excessive

119 We agreed with the DJ and saw no reason why the sentence of 14 weeks' imprisonment was manifestly excessive.

120 In *Sakthikanesh*, the High Court considered the applicable principles for the sentencing of National Service defaulters under the EA. None of the three offenders there was charged with the offence of not returning to Singapore after the expiry of an exit permit under s 32(2) of the EA. However, the High Court promulgated an overarching guideline judgment to govern all National Service defaulters. The Court stated at [31]:

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

121 The guidelines in *Sakthikanesh* therefore govern the sentencing of all National Service defaulters by using a common set of principles for determining when the custodial threshold is crossed (at [61]) and what the appropriate starting point imprisonment terms should be when that threshold is crossed. As reiterated by the Court at [57] and [87], as a general rule, the length of the period of default was the key consideration in the determination of the appropriate sentence for a National Service defaulter, although all the circumstances of the case should also be taken into account.

122 None of the factors raised by the appellant, either before the DJ or before us on appeal, held any weighty mitigating value. The fact that a defaulter served his National Service after returning to Singapore and performed exceptionally well should not, as a general rule, be a relevant consideration for the purpose of sentencing (see the rationale for this position explained in *Sakthikanesh* at [50]–[56]).

123 The appellant's purported ignorance of his legal obligations under the EA would not assist his appeal. It was held in *Krishnan Chand v Public Prosecutor* [1995] 1 SLR(R) 737 at [7] that ignorance of the law is no excuse, whether to exculpate from criminal liability or to mitigate in sentencing. In any event, as we have explained earlier in our judgment, we were satisfied that the appellant was not ignorant about his EA obligations, in particular, the requirement that he could remain outside Singapore only during the validity of Exit Permit 2 and must return by the time it expired.

124 It is also clear that the appellant's personal hardships carried no mitigating weight in sentencing unless they were exceptional. We agreed with the DJ that the appellant's personal circumstances did not qualify as being exceptional. In any event, there was no nexus between the personal hardships and his failure to return to Singapore on 1 October 2013. He had no apparent difficulty returning here for about two weeks between 25 December 2011 and 10 January 2012. According to the appellant, his failure to return to Singapore was due to his ignorance of his EA obligations and was not caused by any dire family circumstances or financial constraints.

125 Accordingly, the sentence of 14 weeks' imprisonment could hardly be said to be manifestly excessive.

Conclusion

126 For the reasons set out above, we dismissed MA 9220 and affirmed the appellant's conviction on the charge. We also dismissed his appeal against the sentence of 14 weeks' imprisonment.

127 We are grateful to the parties and, in particular, to the YIC for their helpful written and oral submissions.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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