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

[2025] SGHC 45

Magistrate's Appeal No 9139 of 2024

Between

Public Prosecutor

… *Appellant*

And

Muhammad Sufian bin Hussain

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Appeal]
[Criminal Law — Offences — Sexual exploitation of a child]
[Criminal Procedure and Sentencing — Sentencing — Persistent offenders]

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Public Prosecutor
v
Muhammad Sufian bin Hussain

[2025] SGHC 45

General Division of the High Court — Magistrate's Appeal No 9139 of 2024
See Kee Oon JAD
17 January 2025

18 March 2025

See Kee Oon JAD:

Introduction

1 The respondent faced one charge under s 8(1)(*a*)(i) of the Children and Young Persons Act 1993 (2020 Rev Ed) ("CYPA"), punishable under s 8(10)(*a*) of the same act, for committing an indecent act with a seven year-old female child at a public place by kissing her on the lips and hugging her. He was convicted after trial and sentenced by the District Judge ("DJ") to six years' corrective training, with effect from 10 April 2022. The DJ's grounds of decision are set out in *Public Prosecutor v Muhammad Sufian bin Hussain* [2024] SGDC 212 (the "GD").

2 The Prosecution appealed against the sentence imposed by the DJ on the basis that it was manifestly inadequate. It sought a sentence of between ten to 12 years of corrective training. After hearing the parties' submissions, I allowed

the appeal and sentenced the respondent to nine years of corrective training. I now set out my reasons for so doing below.

Background

3 A brief Statement of Agreed Facts dated 28 November 2023 was tendered below.[1] The salient facts were not in contention before me and I set them out briefly as follows. The respondent and the victim were strangers to each other. They both resided in the same condominium but in different blocks. In the morning of 9 April 2022, the victim went to the playground in the common area of the condominium. The respondent had just left his sister's unit in the condominium and was on the way to work when he noticed the victim. He approached the victim and led her to a separate block in the condominium compound that neither of them resided in. The victim was under the impression that the respondent wanted to talk to her.

4 At that block, the respondent initially took the lift with the victim to level 14 but, as there were people around at that level, the respondent took the lift with the victim to a different floor (level eight). The respondent brought the victim to the stairwell of that level. There, the respondent asked the victim how old she was, which school she attended and whether she had showered. The victim responded to the respondent's questions with her age, the name of her school, and that she had not showered. The respondent leaned in near the area between the victim's ear and neck to smell her twice, once on each side of her neck.

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[1] Record of Appeal ("ROA") at p 7.

5 Subsequently, the respondent told the victim to promise not to tell anyone, before he asked her for a kiss on the cheeks and the lips. The victim initially said "no", but then she kissed the respondent on the cheeks and lips as she felt that she had "no choice". The respondent also asked the victim for a hug and they consequently hugged.

6 The respondent brought the victim back to the ground floor of the block before they parted ways. Later that evening, the victim told her parents about the incident as she "couldn't hold it already". A police report was lodged the next morning.[2]

The respondent's antecedents

7 The respondent's antecedents all involved sexual offences against young female victims which the respondent pleaded guilty to:[3]

Date of conviction	**Offences**	**Aggregate sentence**
7 November 2003 (The respondent was 29 years old at the time) (the "First Conviction")	One charge of outrage of modesty under s 354 of the Penal Code (Cap 224, 1985 Rev Ed)	14 months' imprisonment
	Two charges of word or gesture intended to insult modesty of woman under s 509 of the Penal Code (Cap 224, 1985 Rev Ed)	
	Four charges taken into consideration: three charges of criminal force under s 352, and one	

[2] First information report dated 10 April 2012 (ROA at p 588).

[3] The respondent's criminal records (ROA at pp 1118–1123).

	charge under s 509 of the Penal Code (Cap 224, 1985 Rev Ed)	
22 April 2009 (The respondent was 34 years old at the time) (the "Second Conviction")	One charge of sexual penetration of a minor under 14 years of age under s 376A(1)(*b*) r/w s 376A(3) of the Penal Code (Cap 224, 2008 Rev Ed)	12 years' preventive detention and 12 strokes of the cane
	Two charges of aggravated outrage of modesty under s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed)	
	One charge for impersonating a public servant under s 170 of the Penal Code (Cap 224, 2008 Rev Ed)	
	Four charges taken into consideration: One charge under s 509, two charges under s 170 of the Penal Code (Cap 224, 2008 Rev Ed), and one charge of sexual exploitation of a child or young person under s 7(*b*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed)	

8 In relation to the First Conviction, the respondent resorted mainly to exposing his genitalia to young female victims between 11 to 13 years of age.[4]

9 As to the Second Conviction, the respondent impersonated a police officer when he separately approached three young females aged between 11 to 13 years. On the pretence that he was searching them for illegal possession of

[4] Pre-sentencing report dated 26 May 2009 ("2009 PSR") at p 2 (ROA at p 1195).

cigarettes, the respondent committed the various offences – the most serious of them being digital penetration of one 11-year-old victim's vagina before ejaculating on her face: see *Public Prosecutor v Muhammad Sufian bin Hussain* [2009] SGDC 172 at [8].

The proceedings below

The Prosecution's submissions

10 The DJ called for pre-sentencing reports and the respondent was assessed to be suitable for both corrective training and preventive detention.[5] As the respondent did not satisfy the requirements under s 304(2) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") for preventive detention to be imposed, the Prosecution argued that corrective training was the "next best option" and urged the court to impose ten to 12 years of corrective training.[6] The maximum term of corrective training that the court may impose is 14 years.

11 According to the Prosecution, if the respondent was sentenced to regular imprisonment, the appropriate sentence would be the maximum prescribed punishment under s 8(10)(*a*) of the CYPA of seven years' imprisonment. This was in view of the following aggravating factors:

(a) The victim was only seven years old at the time and particularly vulnerable.

(b) The respondent capitalised on the fact that the victim was alone and took further steps to isolate her by leading her to the furthest block

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5 Pre-sentencing report dated 19 April 2024 ("2024 PSR") (ROA at pp 1644–1663).

6 Prosecution's address on sentence dated 4 July 2024 at paras 4, 12 and 32 (ROA at pp 1176, 1181 and 1185–1186).

from the guard house and into an enclosed stairwell. He even went to a different level to avoid other people.

(c) The acts of kissing and hugging the victim were intrusive.

(d) The respondent also demonstrated a lack of remorse at trial.

(e) The respondent was a recalcitrant offender.

12 Given the respondent's recalcitrance, the Prosecution submitted that the principle of escalation applied. While the present offence was less sexually intrusive than the respondent's offending in the Second Conviction, his offending escalated in a different way: he targeted an even younger and more vulnerable female (from earlier victims aged between 11 to 13 years, to the present victim that was seven years old). Moreover, the respondent reoffended only a mere ten months after his release from 12 years of preventive detention.

13 According to the Prosecution, in view of the respondent's high risk of sexual reoffending and the need for crime prevention, a longer term of corrective training was necessary. This would also be expedient for the respondent's reformation, since the respondent self-reported a reduced interest in young females as a result of religion and "deterrence from his time in prison (sentence length and living in prison)".

The respondent's submissions

14 The respondent submitted that, based on various district court sentencing precedents, a sentence of eight months' imprisonment was

appropriate. Corrective training was thus excessive, given that the minimum term for corrective training is five years.[7]

15 The respondent accepted that the victim's young age at the time of the offence meant that she was more vulnerable than if an older victim was involved. Nonetheless, the degree of exploitation was low as it was limited to kissing the lips of the victim. Furthermore, there was no coercion by the respondent and also no abuse of trust.

The DJ's decision

16 The DJ's decision on sentence was based on the three-step sentencing framework outlined in *Sim Yeow Kee v Public Prosecutor and another appeal* [2016] 5 SLR 936 ("*Sim Yeow Kee*"). First, the DJ found that the respondent met the prescribed requirements for corrective training to be imposed under s 304(1)(*a*) of the CPC (GD at [15]).

17 The second stage of the *Sim Yeow Kee* framework required consideration of whether it is expedient with a view to the respondent's reformation and the prevention of crime that he be sentenced to corrective training (*Sim Yeow Kee* at [87]). The DJ answered this in the affirmative, having regard to the following factors:

> (a) The likely imprisonment term that the court would impose if it decided to impose a term of regular imprisonment on the respondent was between four to five years' imprisonment. The DJ found that the

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7 Defence's mitigation plea dated 8 July 2024 at paras 17 and 34–35 (ROA at pp 1589–1590 and 1596).

respondent's overall culpability for the incident matter "paled in comparison to" the Second Conviction (GD at [22]).

(b) The mandatory aftercare scheme ("MAS") would apply to the respondent if he was sentenced to a regular term of imprisonment, and the MAS would benefit him. However, the DJ found that the relevance of the MAS was displaced by the need for a more robust sentence of corrective training in the present case (GD at [26]).

(c) Finally, the DJ held that corrective training would not be unduly disproportionate. Corrective training for a longer period than the regular period of four to five years' imprisonment was necessary to deter the respondent and also preferable for his reformation prospects (GD at [27]).

18 The DJ disagreed with the Prosecution's submission for ten to 12 years of corrective training. While the DJ acknowledged that the respondent was last sentenced to 12 years' preventive detention and 12 strokes of the cane, he was mindful that the respondent was presently only charged with a single charge under s 8(1)(*a*)(i) of the CYPA. The present matter was less egregious and intrusive than the offences in prior convictions, and an equivalent or heavier sentence than the prior term of 12 years' preventive detention could be disproportionate. As such, the DJ determined that an uplift of one to two years from a term of four to five years' imprisonment was appropriate, and arrived at a sentence of six years' corrective training (GD at [34]–[39]).

The parties' cases on appeal

19 On appeal, the Prosecution argued that the sentence of six years' corrective training was manifestly inadequate, and submitted as they did below

that a term of ten to 12 years' corrective training was appropriate. It was submitted that, if the respondent was subject to regular imprisonment, the DJ had erred by assessing that the appropriate term of imprisonment was four to five years' imprisonment:

(a) The DJ failed to give sufficient weight to the aggravating factors in the index case when applying the principle of escalation.[8]

(b) The DJ erred in placing undue weight on the fact that the index offending was less intrusive than that in the Second Conviction.[9]

(c) The DJ failed to utilise the full sentencing range under s 8(10)(*a*) of the CYPA. The DJ's reliance on the sentencing precedents was misplaced, and he also erred in placing undue weight on "the conceivability of there being much more heinous and intrusive acts" that fall within that provision.[10]

20 Next, the Prosecution argued that the DJ had erred in calibrating the term of corrective training:

(a) The DJ failed to give due weight to specific deterrence. The prevention of crime was the main sentencing consideration behind imposing corrective training, as a result of the respondent's "abysmal" prospects of rehabilitation. The respondent possessed a high likelihood of sexual reoffending, and prior attempts to rehabilitate him had failed. The respondent also demonstrated a concerning lack of accountability

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8 Appellant's written submissions dated 7 January 2025 ("AWS") at paras 16–27.

9 AWS at paras 28–32.

10 AWS at paras 33–40.

for his offending conduct. Moreover, he failed to make any genuine effort to seek intervention in the community.[11]

(b) The respondent's past conduct also demonstrated that, if any reformation was to be even attainable, it could only be achieved through a sufficiently lengthy period of incarceration.[12]

(c) The DJ placed undue weight on the principle of proportionality in determining the appropriate length of corrective training to impose.[13]

21 In his written submissions, the respondent essentially urged the court to dismiss the appeal and affirm the sentence of six years' corrective training.

Issues to be determined

22 The issues to be determined were as follows:

(a) The imprisonment term that would likely be imposed on the respondent for the underlying offence; and

(b) The appropriate length of corrective training.

The applicable legal principles

23 The law in relation to corrective training is set out in the CPC and the Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010. Section 304(1) of the CPC provides as follows:

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11 AWS at paras 42–64.

12 AWS at paras 68–71.

13 AWS at paras 72–82.

> **Corrective training and preventive detention**
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> **304.**—(1) Where a person of 18 years of age or above —
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> > (*a*) is convicted before the General Division of the High Court or a District Court of an offence punishable with imprisonment for 2 years or more, and has been convicted in Singapore or elsewhere at least twice since he or she reached 16 years of age for offences punishable with such a sentence; or
> >
> > (*b*) is convicted at one trial before the General Division of the High Court or a District Court of 3 or more distinct offences punishable with imprisonment for 2 years or more, and has been convicted and sentenced in Singapore or elsewhere to imprisonment for at least one month since he or she reached 16 years of age for an offence punishable with imprisonment for 2 years or more,
>
> then, *if the court is satisfied that it is expedient with a view to the person's reformation and the prevention of crime that the person should receive training of a corrective character for a substantial period of time, followed by a period of supervision if released before the expiry of his or her sentence*, the court, unless it has special reasons for not doing so, must sentence him or her to corrective training for a period of 5 to 14 years in lieu of any sentence of imprisonment, or any sentence of imprisonment and fine.
>
> [emphasis added]

24 Once the formal requirements in s 304(1) are satisfied, the court should then consider if, with a view to "[the offender's] reformation and the prevention of crime", it is expedient to impose corrective training on the offender. These two considerations, namely the offender's reformation and crime prevention, must be taken together. A focus on crime prevention alone would render the corrective training regime virtually indistinguishable from that of preventive detention (*Sim Yeow Kee* at [87]):

> … we consider that the two considerations which are stated in s 304(1) of the CPC – namely: (a) reformation of the offender; and (b) the prevention of crime – must be taken together. In other words, the object of preventing crime *alone* would not afford a sufficient basis for the court to impose CT *unless it is also satisfied* that the longer term of incarceration mandated

> under the CT regime would be expedient for the offender's reformation. A focus on crime prevention *alone* would in fact result in the CT regime being virtually indistinguishable from the PD regime, under which (assuming the offender satisfies the technical requirements set out in s 304(2) of the CPC) PD is to be imposed where it is "expedient for the protection of the public" to do so.
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> [emphasis in original]

25 At this stage, based on the sentencing framework in *Sim Yeow Kee,* the court would take into account: (a) the imprisonment term that would likely be imposed on the offender for the underlying offence; (b) whether the MAS would apply to the offender if he were sentenced to regular imprisonment; and (c) whether a sentence of corrective training would be unduly disproportionate.

Issue 1: The imprisonment term that would likely be imposed for the underlying offence

26 In relation to the imprisonment term that would likely be imposed on the offender for the underlying offence, this "[did] not involve just a tabulation of the *tariff* sentence for the underlying offence in question" [emphasis in original]. Instead, the court should have regard to "the sentence that it would actually impose for that offence if it decides not to sentence the offender to [corrective training]", in view of sentencing principles such as the principle of escalation (*Sim Yeow Kee* at [99]). I found that, if the respondent was subject to regular imprisonment, the term that would be imposed was five to six years' imprisonment. I was of the view that a higher starting point than the DJ's indicative sentence of four to five years' imprisonment was appropriate, having regard to the respondent's antecedents and the fact that he had reoffended within a very short time after his release from a long term of incarceration.

27 For the same reason, *ie*, that the respondent was a particularly recalcitrant offender who had previously been sentenced to 12 years of

preventive detention and caning for sexual offences against young females and that he had reoffended in the present case *a mere ten months* after his release, any tariff sentence and/or sentencing precedents did not meaningfully assist in his sentencing. In this regard, I agreed with the Prosecution that the sentencing precedents considered by the DJ (GD at [18]–[19]) did not appear to be the most relevant.[14] Most of those cases involved a first-time offender who pleaded guilty to the charges and the victims involved were between 12 to 15 years old at the time of offence.

28 Moreover, as pointed out by the Prosecution,[15] the maximum prescribed punishment for the offence of sexual exploitation of a child or young person at the time of some of these sentencing precedents was different from the prevailing position: first time offences under s 8(1)(*a*) of the CYPA may presently be punished with imprisonment for a term not exceeding seven years, but its predecessor provisions provided for a maximum imprisonment term of five years and even two years in the past. As I had observed in *Pittis Stavros v Public Prosecutor* [2015] 3 SLR 181 at [61]–[62], legislative amendment of the maximum prescribed punishment may signal the need for a corresponding change in the appropriate sentence to be imposed in response to the same criminal conduct since the court's duty is to utilise the full sentencing range available to it, though this was always subject to the considerations in each case.

29 I also noted that the fact that the respondent had reoffended within just *ten months* of his release from preventive detention was absent from the DJ's grounds.[16] It was also in this context that I found, if the respondent was subject

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14 AWS at para 35.

15 AWS at para 36.

16 Petition of appeal dated 16 September 2024 at para 3(c) (ROA at p 12).

to regular imprisonment, the sentence to be imposed would be five to six years' imprisonment rather than four to five years' imprisonment (see also [26] above).

30 However, the Prosecution's position, that seven years' imprisonment (*ie*, the statutorily prescribed maximum for the index offence) would be appropriate for the respondent's offence if he had been sentenced to regular imprisonment, was excessive. Respectfully, the Prosecution erred in two ways which culminated in its failure to place sufficient weight on the principle of proportionality. First, the Prosecution was unduly influenced by the length of the term of preventive detention imposed on the respondent for the Second Conviction. This appeared to feature as a form of anchoring bias which fed into the Prosecution's reasoning. The Prosecution essentially suggested that, since the respondent was previously sentenced to 12 years of preventive detention and yet he reoffended fairly quickly after his release, "it [left] no doubt that only a similarly lengthy period of incarceration, *at minimum*, [was] necessary" [emphasis in original].[17] Second, the Prosecution also erred by framing preventive detention as the ideal sentencing option for the present matter, and that corrective training was merely the "next best sentencing option".[18] I address these in turn.

31 It was undisputed by the parties that the principle of escalation applied in the present case in view of the respondent's cycle of offending and cavalier disregard for the law (*Public Prosecutor v Low Ji Qing* [2019] 5 SLR 769 ("*Low Ji Qing*") at [62]). Despite his prior sentences, the respondent persisted in preying on young females, and applied a similar *modus operandi* of isolating them at a stairwell. According to the Prosecution, the principle of escalation was

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17 AWS at paras 2 and 70.

18 AWS at paras 2 and 74.

usually invoked to *cumulatively* increase the sentences imposed for persistent offenders, and thus the application of the principle should "actually result in a *higher* sentence than the 12-year [term of preventive detention that was imposed in the Second Conviction]" [emphasis in original]. As such, the Prosecution submitted that the maximum prescribed sentence of seven years ought to apply, since "4–5 years' of regular imprisonment … was merely a fraction of the sentence of 12 years' [preventive detention] and 12 strokes … imposed after [the Second Conviction]".[19]

32 I accepted that the principle of escalation is generally invoked to cumulatively increase sentences for subsequent offending conduct, which reflects the fact that prior sentences and their severity have failed to stop the offender from criminality (*Low Ji Qing* at [58]–[59]). Nonetheless, it must be remembered that the principle of escalation is "no more than a reformulation of the longstanding principle that specific deterrence may justify a longer term of imprisonment being imposed on a persistent offender in light of his antecedents" if these antecedents "reflected a tendency for repeat offending or a marked proclivity toward criminal offending" (*Low Ji Qing* at [56]–[57], citing *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [14]–[16]). While specific deterrence may sometimes justify a stiffer sentence, the law is clear that this "cannot be given such weight as to lead to the imposition of a penalty which is *disproportionate* to the gravity of the instant offence" [emphasis added] (*Low Ji Qing* at [74]). As rightly pointed out by the respondent, his present criminality cannot be tied to his prior term of preventive detention on the mere basis of his prior antecedents, without proper regard for proportionality.[20]

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19 AWS at para 27.

20 Respondent's written submissions dated 14 January 2025 at paras 23–24.

33 The application of the principle of escalation incorporated the safeguard of proportionality in two ways: the court would (a) compare the accused person's previous offending with the index offence, so that he would not be punished a second time for his earlier offence; and also (b) undertake a comparison between the severity of the sentence imposed for the index offence and the gravity of the index offence in the context of the offender's circumstances (*Low Ji Qing* at [74]–[75] and [77]). In relation to point (a), the Court in *Low Ji Qing* (at [75]) noted that an index offence did not need to be of equivalent severity before a heavier sentence might be imposed by virtue of reoffending. However, "[a]n equivalent or heavier sentence could be disproportionate" where the "index offence is much less egregious than the accused person's last antecedent".

34 It was clear to me that the index offence was indeed palpably less egregious than the offending conduct in the Second Conviction. The Second Conviction involved *three* victims (between 11 to 13 years old) and a relatively more serious charge of digital-vaginal penetration of a minor. The respondent also impersonated a police officer to commit those sexual offences.[21] Nevertheless, I accepted the Prosecution's submission that, contrary to the DJ's finding, the respondent's overall culpability for the index offence did not "[pale] in comparison" to the Second Conviction for the following reasons: (a) the present victim was seven years old and far more vulnerable than the victims involved in the Second Conviction; (b) the respondent reoffended within ten months of his release; and (c) the respondent displayed no remorse in these proceedings.[22] Even so, when comparing the Second Conviction to the index

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21 Papers for the Second Conviction (ROA at pp 1664–1678).

22 AWS at paras 28–30.

offence, the latter plainly does not justify a sentence pegged at the statutory maximum, much less a term of incarceration close to 12 years.

35 It also appeared to me that, by seeking a longer period of corrective training to be imposed, the Prosecution was perhaps attempting to "compensate" for the court's inability to impose preventive detention in the present case. This was also evident from its written submissions that, had the respondent met the technical requirements under s 304(2) of the CPC, another term of preventive detention would have been justified and that corrective training was merely the "next best sentencing option". This reasoning is incorrect in principle. The statutory constraints precluding preventive detention from being imposed in this case were operative. These constraints reflect the distinction between corrective training and preventive detention as to their respective objectives (see above at [24]) and the recognition that considerations of proportionality would be more rigorously applied in the former rather than the latter regime (*Sim Yeow Kee* at [97]). Put another way, corrective training cannot be the "next best" option, when preventive detention was simply not an available option for the present matter to begin with.

36 In sum, I found that, if the respondent was subject to regular imprisonment, the term to be imposed would be five to six years' imprisonment. In relation to the second step of the *Sim Yeow Kee* framework as to whether the MAS would apply to the respondent, I agreed with the DJ that, even though the MAS was applicable to the respondent and may be beneficial to the respondent's rehabilitation, this did not militate against the imposition of corrective training. As I will explain, a more robust sentence was necessary for crime prevention and also to provide a longer "runway" for the respondent's rehabilitation.

Issue 2: The appropriate length of corrective training

37 I turn to address the appropriate length of corrective training to be imposed in the present case. I found this to be nine years of corrective training. A steeper enhancement of three to four years from the presumptive term of regular imprisonment, rather than the one to two years' uplift imposed by the DJ, was necessary for the respondent's rehabilitation and also crime prevention. This was principally for two reasons.

38 First, I agreed with the Prosecution that the DJ placed undue weight on proportionality at *this stage* of the analysis when calibrating the length of corrective training. When determining the appropriate length of corrective training to be imposed, the DJ considered that the respondent "should not be punished in such a way that was unduly disproportionate with the gravity and seriousness of the present offence" (GD at [35], [36] and [39]). However, while proportionality was an important consideration when applying the principle of escalation and/or specific deterrence, it applied to an "attenuated extent" at the stage of calibration of a term of corrective training (*Sim Yeow Kee* at [105]). This was because, by this stage, the court would have already determined that an even longer term of incarceration is called for than the term of regular imprisonment which would likely be imposed.

39 As such, at this stage of the analysis, proportionality was best incorporated as a negating consideration which would justify not imposing corrective training if the statutorily-prescribed minimum term of five years would result in a period of incarceration that was "seriously or unduly disproportionate" to the aggregate imprisonment term which had been arrived at (*Sim Yeow Kee* at [105]). The Court in *Sim Yeow Kee* also went on to observe that, for cases where a longer term of corrective training was called for (such as

the present), proportionality "may bear little weight", and the emphasis would be on "crime prevention and deterrence to a greater degree as a means of securing the reformation of the offender" (at [107]):

> *The analysis of proportionality (and the rehabilitative benefits of the MAS being made available to the offender) may bear little weight when a longer term of CT is called for, since the alternative would be a correspondingly longer term of imprisonment.* Moreover, *the emphasis in such cases would likely be on crime prevention and deterrence to a greater degree as a means of securing the reformation of the offender.* In fact, in such cases, the court should consider imposing the alternative sentence of PD if the offender qualifies for this and if the court is satisfied that the paramount consideration is the protection of the public.
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> [emphasis added]

40 I pause here to observe that, although deterrence featured strongly in the present case, it was not appropriate to describe the respondent's rehabilitation prospects as "abysmal" such that corrective training became simply a means to an end to secure a longer period of incarceration. On appeal, the Prosecution submitted that, as a result of the respondent's "abysmal" prospects of reform, "the balance should be tilted firmly in favour of specific deterrence and crime prevention in determining the appropriate length of [corrective training]".[23] It also stated that "[a]ny reformation by the [r]espondent can only be achieved by a sentence of [ten to 12 years], *failing which, the prevention of crime during this period is minimally guaranteed*" [emphasis added].[24] These arguments suggested that the respondent had virtually no potential for reform and that corrective training should be imposed without serious regard to the respondent's prospects for rehabilitation, as a means to the end of securing a longer period of incarceration for other sentencing objectives (such as crime prevention,

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23 AWS at para 43.

24 AWS at paras 71 and 84.

deterrence and/or protection of the public). This was plainly incorrect. As I had emphasised above (at [24]), one of the two key objectives of the corrective training regime is rehabilitation. For corrective training to be imposed, the court must consider that it is expedient for *both* crime prevention and the offender's reformation. There was no basis for the court to be asked to balance the two considerations such that one may effectively override the other. It was for this same reason that I enhanced the length of corrective training imposed on the respondent, such that he may have a longer "runway" for his reformation.

41 With the above in mind, I turn to my second reason for enhancing the length of corrective training imposed on the respondent. Given the respondent's recalcitrance, a term of corrective training beyond six years was necessary for both crime prevention and his reformation. The pre-sentencing report prepared in 2024 (the "2024 PSR") found that the respondent possessed a high likelihood of sexual reoffending, and there was a moderate likelihood of him committing a sexual offence in the near future upon release if no risk mitigation plans were implemented.[25] I also summarise the key findings across the various reports prepared for the respondent, which revealed that the respondent's reformation prospects had been poor across the years, despite intervention and incarceration:

> (a) In the 2024 PSR, the respondent proclaimed to no longer be sexually attracted to young females after his release from the previous sentence. However, he now targeted a seven-year-old child, who was even more vulnerable than the 11 to 13-year-old female victims involved in the Second Conviction.[26]

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25 2024 PSR at p 9 (ROA at p 1652).

26 2024 PSR at p 7 (ROA at p 1650).

(b) Despite pleading guilty to the offences in his Second Conviction, he now denied, in the 2024 PSR, that he committed the digital penetration offence in the Second Conviction.[27] He also minimised his offences in the Second Conviction by stating that he "did not do harmful things" and that he only "touched [the victims] at [their] hands, hips and neck" areas.[28]

(c) The respondent was also subject to five months of sexual violence psychological intervention prior to his release from prison after the Second Conviction. According to the 2021 intervention closure report, he underwent 46 sessions, and completed the programme satisfactorily.[29] However, he then reoffended within ten months of his release and completion of this programme.

(d) The respondent did not make any genuine effort to seek intervention in the community.[30] He defaulted on his outpatient appointments at the Institute of Mental Health after the first session.[31] As pointed out by the Prosecution, this mirrored his conduct following his release from prison in 2004, where he had also defaulted on his outpatient appointments after the first session.[32] While the respondent had raised issues such as his financial difficulties and that the medication provided had adverse side effects that affected his ability to work, these

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27 2024 PSR at p 5 (ROA at p 1648).

28 2024 PSR at p 7 (ROA at p 1650).

29 Intervention closure report dated 30 July 2021 ("2021 Closure Report") (ROA at pp 1231–1234).

30 AWS at para 56.

31 Report by the Institute of Mental Health dated 22 April 2022 at para 7(b).

32 2009 PSR at pp 2–3 (ROA at pp 1195–1196).

ultimately cast doubt on whether he was committed to obtaining professional help.[33]

(e) In another pre-sentencing report prepared in 2009 and the 2021 intervention closure report,[34] protective factors were identified in the respondent's case: the respondent had positive family and/or romantic relationships, he lived with his family, and he was gainfully employed. However, the 2024 PSR found that there were *no* protective factors since none of the above had actually helped the respondent.[35] Indeed, the respondent reoffended while on the way to work from his sister's home (see above at [3]).

42 Nevertheless, the respondent self-reported that he had a reduced interest in young female children as a result of religion and "*deterrence from his time in prison* (sentence length and living in prison)" [emphasis added].[36] After commission of the offences in the Second Conviction, the respondent shared that he thought that he would, at worst, be sentenced to twice the sentence imposed in the First Conviction – in other words, he was quite prepared to possibly have to serve two years of imprisonment for committing the offences in the Second Conviction.[37] It was clear that a longer term of corrective training was required to deter the respondent from preying on female children and to secure his rehabilitation.

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33 2009 PSR at p 3 (ROA at p 1196); 2024 PSR at p 7 (ROA at p 1650).

34 2009 PSR at pp 4–5 (ROA at pp 1197–1198); 2021 Closure Report at p 4 (ROA at p 1234).

35 2024 PSR at p 8 (ROA at p 1651).

36 2021 Closure Report at p 4 (ROA at p 1234).

37 2021 Closure Report at p 3 (ROA at p 1233).

Conclusion

43 For the reasons I have set out above, I allowed the appeal and enhanced the respondent's sentence from six years to nine years of corrective training.

See Kee Oon
Judge of the Appellate Division

Alexandria Shamini Joseph (Attorney-General's Chambers) for the appellant;
Mohammad Shafiq bin Haja Maideen (M Shafiq Chambers LLC) for the respondent.