IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 134

Magistrate's Appeal No 9213 of 2015/01

Between

Muhammad Zuhairie Adely
Bin Zulkifli

And

Public Prosecutor

GROUNDS OF DECISION

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

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Chan Seng Onn J:

Introduction

1 This was an appeal brought by the Appellant, a youthful offender against his global sentence of 18 months' imprisonment and six strokes of the cane imposed upon the Appellant's plea of guilt (see the District Judge's grounds of decision reported at *Public Prosecutor v Muhammad Zuhairie Adely Bin Zulkifli* [2015] SGDC 359 (the "GD")). The main issue central to the appeal was whether reformative training or imprisonment and caning was the appropriate sentence. The prioritisation of the primary sentencing considerations engaged was thus a matter contested.

2 After considering the submissions of the parties and the precedent cases, I was of the view that reformative training was the much more appropriate sentence that achieved the twin sentencing objectives of

deterrence and rehabilitation. Although the Appellant's offences were serious and did attract some level of public disquiet and outrage, this was not a case that was so heinous such that the statutory prescribed punishment should be imposed, especially after considering the Appellant's unfortunate circumstances and positive reformative prospects.

3 I allowed the appeal, and ordered the Appellant's sentence of imprisonment and caning to be substituted with a sentence of reformative training.

Background

The Appellant's background

4 The Appellant was a first-time youthful offender prior to his conviction in the proceedings below, and was 17 years of age at the time of the appeal. He was a student of NorthLight School from 2011 to 2014 with regular overall attendance and generally good overall conduct, academic performance and co-curricular activities participation. He had a perfect score of 4.0 for his Grade Point Average and received several school awards. Upon completion of his course at NorthLight School, he enrolled into the Institute of Technical Education College West ("ITE College West") in January 2014. He was reported to exhibit very regular attendance and good academic performance at ITE College West as well.[1] These were achieved notwithstanding the Appellant's unfortunate family background that was characterised by financial difficulties, a lack of effective parental care, and negative parental role-

[1] Appellant's Pre-Sentence Probation Officer's Report ("Probation Report"), at pp 10–11 (Record of Proceedings Bundle ("ROP Bundle"), at pp 307–308).

modelling that included repeated incarceration, unemployment, domestic violence and substance abuse.[2]

5 Due to the high-risk family background and lack of proper adult supervision and care, the Appellant was admitted into the Salvation Army Gracehaven on 20 January 2011 for his care and protection.[3] On 21 January 2011, an interim Care and Protection Order was made under the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") for the Appellant to be admitted into the Singapore Boys' Home for three months. Thereafter, he was ordered to be placed under the care of his maternal aunt for one year, while under the statutory supervision of an approved welfare officer. This placement broke down and the Appellant was ordered to reside at the Muhammadiyah Welfare Home ("MWH") on 30 March 2012. Since then, the Appellant had been resident at MWH with the initial Care and Protection Order extended twice as his parents were assessed to be still unable to provide and care for him. Due to the offences that he faced, the Appellant was expelled from ITE in March 2015. Upon the lapse of the order in August 2015, the Appellant voluntarily extended his stay in MWH to complete his "N" Level examinations as a private candidate.[4]

The offences and the circumstances under which they were committed

6 On 31 March 2014, while still resident at MWH under an extended Care and Protection order under s 49(1)(*c*) of the CYPA, the Appellant failed

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[2] Appellant's Psychological Report dated 12 November 2015 ("Psychological Report"), at paras 7–9 and 35 (ROP Bundle, at p 326); Probation Report, at para 6.2 (ROP Bundle, at p 319).

[3] Probation Report, at pp 12–13 (ROP Bundle, at pp 309–310).

[4] Psychological Report, at para 16 (ROP Bundle, at p 323).

to return to MWH after his school's Industrial Attachment Programme at Bukit Merah.[5]

7 After having escaped from the lawful custody of MWH, the Appellant (then aged 15) at or about midnight on 20 April 2014 with five of his friends (including one Rizqi) met at East Coast Park.[6] Rizqi's girlfriend, one Eka, was also present. Eka had walked away to meet one of her male friends, one Norazrul. When Eka did not return after some time, the Appellant and Rizqi went to search for her. Rizqi discovered that Eka had spent time alone with Norazrul and was displeased. The Appellant and his five friends then confronted the Norazrul. Rizqi who was shirtless then identified himself as Eka's boyfriend and indicated that he was from a gang. Without warning, the Appellant punched Norazrul on the left cheek, and thereafter the other five friends joined in to kick and punch him as well, continuing to do so even after Norazrul had fallen down. Norazrul eventually managed to get up and escape when he ran to a nearby barbeque pit where a family was having a barbeque and an unknown passer-by yelled for them to stop assaulting Norazrul. Norazrul then called for police assistance but declined to be treated for his injuries, which included swelling on the left cheek and multiple bruises and abrasions all over his body.

8 Subsequently, the Appellant returned to MWH on 25 April 2014, and continued residing there. Sometime in the evening of 7 March 2015, the Appellant (then aged 16, already enrolled in ITE College West) was in the Clarke Quay area when he chanced upon a fellow female ITE College West student Norhalizah Bte Abdul Wahab ("Norhalizah") who was walking around

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[5] Probation Report, at p 14 (ROP Bundle, at p 311).

[6] Consolidated Statement of Facts, at pp 5–6 (ROP Bundle, at pp 11–12).

in the area with her boyfriend Ahmad Nurthaqif Bin Sahed ("Ahmad"), a graduate of ITE College West. The Appellant shouted out "baby" to Norhalizah and the two of them had a brief conversation. Subsequently, when Norhalizah went to the restroom, Ahmad confronted the Appellant and communicated his displeasure at the Appellant calling Norhalizah "baby". The Appellant claimed that this nickname was used by Norhalizah over the years with her peers, including him, without any romantic meaning. He had known her since he was at NorthLight School.[7]

9 Over the next few days from 7 to 10 March 2015, the Appellant sent text messages to Norhalizah and informed her that he wished to meet Ahmad to "talk things out with him". Norhalizah replied that Ahmad was not free to do so.

10 On 9 March 2015, the Appellant carried a bread knife (with a 35-centimetre-long blade) to school. He claimed to be preoccupied with thoughts of getting even with the victim, as he perceived Ahmad to be unfair and dismissive. The Appellant kept the bread knife in his school locker.

11 On 10 March 2015, Norhalizah went to ITE College West at 12.30 p.m. to meet Ahmad. Classes were in session and there were other students and teachers present. While Ahmad was walking around the campus, the Appellant spotted him and confronted him, stating that he was unhappy with him. Thereafter, the Appellant took the bread knife from his locker. The Appellant later spotted Ahmad at the open-air meeting area in the ITE College West campus known as the "Piazza". Ahmad was sitting down in the Piazza with Norhalizah and some other friends. At the material time, there were more

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[7] Psychological Report, at para 29 (ROP Bundle, at p 325).

than 50 other persons at the Piazza, most of whom were fellow students. The Appellant admitted that he had brought the knife along so that Ahmad would be fearful of him; however he felt that Ahmad had tested his limits and he decided to use the knife to slash him. The Appellant attributed arming himself with a weapon to his perceived intimidation from Ahmad and his larger build, as well as an alleged assault by Ahmad in Clarke Quay on 7 March (the Appellant claimed Ahmad kicked him on his chest), and his presumed need to confront Ahmad without injuring himself.[8]

12 He charged at Ahmad from behind, slashed him once, and Ahmad immediately ran to the centre of the Piazza with the Appellant in pursuit. Ahmad then kicked the Appellant in defence. The Appellant fell to the ground, got back up and swung the knife repeatedly at Ahmad's face. Ahmad thus used his hands to protect his face and was slashed on his hands. Ahmad eventually managed to escape from the scene, with the Appellant remaining in the middle of the Piazza. The Appellant then paced about for some time before a friend came up to him and removed the knife from his hands. He then fled from the scene, but was arrested later that day at his grandmother's residence.

13 ITE staff rendered first aid to the Ahmad. Ahmad was later conveyed to and admitted to National University Hospital for two days. After being deemed fit for discharge, he was given three months of medical leave. According to his medical report, he suffered from fractures on his forearm, ringer finger, little finger, was cut behind his left ear and had a two-centimetre laceration on his upper back.

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[8] *Ibid*, at paras 29–32 (ROP Bundle, at pp 325–326).

The proceedings and decision below

14 In the proceedings below, the Appellant pleaded guilty to two separate charges under ss 326 and 147 of the Penal Code (Cap 224, 2008 Rev Ed) (the "grievous hurt offence" and "rioting offence", respectively) on 16 October 2015:

> DAC 908497/2015 (the grievous hurt offence)
>
> … [T]hat you, on 10 March 2015, at or about 12.30pm, at 1 Choa Chu Kang Grove, ITE College West, Singapore, did voluntarily cause grievous hurt to one namely Ahmad Nurthaqif Bin Sahed, by means of a bread knife with a blade measuring 35cm in length, which when used as a weapon of offence is likely to cause death, to wit, by using the said bread knife to slash the said Ahmad Nurthaqif Bin Sahed repeatedly on his body, causing the following injuries:
>
> a) Left ulna fracture;
>
> b) Left ring finger fracture;
>
> c) Left little finger fracture;
>
> and you have thereby committed an offence punishable under Section 326 of the Penal Code, Chapter 224.
>
> DAC 915833/2015 (the rioting offence)
>
> … [T]hat you, on the 20th day of April 2014, at or about 2.28 am, at Xtreme SkatePark @ East Coast, along East Coast Park Service Road, Singapore, together with:-
>
> (i) Mohamad Hairy B. Hassan, Male/15 years
>
> (ii) Muhammad Khizryn Putera Irwan, Male/14 years
>
> (iii) Rizqi Andika Bin Azmi, Male/16 years
>
> (iv) Shafil Elfi Bin Mohamed Yusoff, Male/15 years
>
> (v) Mohamad Amirul Shafi Bin Abdullah, Male/15 years
>
> were members of an unlawful assembly whose common object was to cause hurt to one Norazrul Bin Mohd Noor, and in the prosecution of the common object of the assembly, one or more of you used violence on the said Norazrul Bin Mohd Noor, to wit, by punching and kicking him, and you have thereby committed an offence punishable under Section 147 of the Penal Code, Chapter 224.

15 A charge of escaping from the legal custody of MWH (see above at [6]) under s 225B of the Penal Code was also taken into consideration for the purposes of sentencing. The District Judge then called for pre-sentence probation and reformative training reports while the Appellant was being remanded.

16 On 25 November 2015, the District Judge sentenced the Appellant to 18 months' imprisonment and six strokes of the cane for the grievous hurt offence, and six months' imprisonment for the rioting offence. He ordered both sentences to run concurrently, resulting in an aggregate sentence of 18 months' imprisonment and six strokes of the cane.

17 As to why imprisonment was imposed and not reformative training, the District Judge had agreed with the Prosecution's submissions that in view of the seriousness of the grievous hurt offence, rehabilitation as the usual dominant sentencing consideration in dealing with youthful offenders had to give way to deterrence. He held that the grievous hurt offence committed in broad daylight in full view of students and teachers on campus was "egregious and particular heinous", involved a degree of premeditation, and the victim had suffered serious injuries that indicated the ferocity of the attack. He was also of the opinion that the offence was a violent one that caused alarm to members of the public (see [19]–[27] of the GD).

18 Upon the Appellant's filing of his Notice of Appeal on 26 November 2015, the District Judge granted a stay of execution of the Appellant's sentence on 30 November 2015.

The appeal

19 In his appeal, the Appellant sought for a substitution of the order of imprisonment and caning with an order for reformative training on the basis that:

(a) the District Judge's sentence of imprisonment and caning was manifestly excessive as rehabilitation should still be the predominant sentencing consideration;

(b) the offences the Appellant committed were not as serious as the District Judge had thought them to be;

(c) even if they were, the offences committed were *not so serious* that rehabilitation was displaced by deterrence as the dominant sentencing consideration;

(d) the Appellant's "strong potential for reform" was given insufficient or no weight in deciding the most appropriate sentence; and

(e) reformative training was the most appropriate sentence with reformation as a priority with the attendant element of incarceration carrying a significant deterrent effect.

20 In response, the Prosecution submitted that:

(a) the District Judge had properly appreciated both the aggravating and mitigating factors of the case and had rightly come to the conclusion that the grievous hurt offence was a particularly serious offence;

(b) the District Judge had correctly appreciated that deterrence took precedence over rehabilitation in the present case as (i) the grievous hurt offence was a particularly heinous one, (ii) the Appellant's prospects for rehabilitation should not be overstated; and (iii) young offenders had been sentenced to imprisonment and caning in circumstances of equal or lesser gravity; and

(c) the sentence that was meted out by the District Judge was appropriate in all circumstances.

Sentencing of youthful offenders: principles

21 In *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz*") at [28], Sundaresh Menon CJ, citing *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*"), described the well-established two-staged approach for a court sentencing a youthful offender as follows:

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

First step: identification and prioritisation of sentencing considerations

22 In the first stage, the inquiry is concerned with the threshold question of whether rehabilitation retains its primacy in the sentencing matrix. It is trite that rehabilitation is the dominant sentencing consideration when dealing with youthful offenders (see *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Maurice Mok*") at [21], *per* Yong Pung How CJ), as young

offenders are in their formative years and the chances for successful rehabilitation are better. Compassion is thus shown to them on the basis that the young "don't know any better", and to keep them away from the "corrupt influence of a prison environment and the bad effects of labelling and stigmatisation".

23 Nonetheless, rehabilitation can be diminished or eclipsed by considerations such as deterrence or retribution in appropriate situations where, as Menon CJ pointed in *Boaz* at [30] (the "*Boaz* factors"):

(a) the offence is serious;

(b) the harm caused is severe;

(c) the offender is hardened and recalcitrant; or

(d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.

24 In striking the balance between the *dominant* consideration of rehabilitation and the need for deterrence, V K Rajah JA (as he then was) in *Al-Ansari* at [67] suggested the following relevant factors:

(a) the seriousness of the offence;

(b) the culpability of the offender;

(c) the existence of antecedents;

(d) the nature of the rehabilitation best suited for the offender;

(e) the availability of familial support in the rehabilitative efforts; and

(f) any other special reasons or need for rehabilitation.

25 I would venture to suggest that these six non-exhaustive factors in *Al-Ansari* had been distilled to the four listed subsequently in *Boaz* (see above at [23]), with the last three broadly equivalent to whether rehabilitative sentencing options are viable for the particular youthful offender. The fourth factor relating to the nature of rehabilitation best suited for the offender arguably jumps the gun to a certain extent. But from the discussion at [74]–[75] of *Al-Ansari*, it would seem Rajah JA had in fact meant to refer to the viability and suitability of rehabilitative options *in general*. Only upon identifying that rehabilitation remained a dominant sentencing consideration would a deeper analysis of the nature of rehabilitation best suited for the offender be engaged in the second step of the analytical framework where the court would decide on the most appropriate sentence that gives effect to the proper balance between rehabilitation and deterrence in the particular case. For the avoidance of doubt, this does not mean that the *Boaz* factors are irrelevant in the second stage. The court would still have to keep those factors in mind while deciding on the most appropriate sentence.

26 I should also state that it is not necessary for *all* the *Boaz* factors to be present for a court to hold that rehabilitation has been displaced as the primary sentencing consideration. However, if the offence is so serious *and* the young offender has no or very low rehabilitative prospects, then deterrence and/or punishment (in the form of imprisonment) would likely displace rehabilitation as the dominant consideration (see *Al-Ansari* at [61]).

27 Hence, as the Prosecution submitted[9] and I had agreed, it was not necessary that a youthful offender was incapable of reform before the

sentencing considerations such as deterrence and/or retribution could come to the fore and eclipse rehabilitation. The converse should then also hold true: that the absence of any *one* or more of the *Boaz* factors would not always lead to the conclusion that the rehabilitation should retain its primacy in the sentencing matrix. Hence, just merely because a rehabilitation sentencing option such as reformative training is *viable* would not mean that the court would inexorably grant a sentence of reformative training. However, if a youthful offender's reformative prospects are demonstrably good, the court should bear this in mind and lean in favour of rehabilitation when balancing the relevant sentencing considerations in the sentencing process.

28 After all, in situations where probation was considered in the sentencing of youthful offenders, it has been held that in cases where the individual offender's capacity for rehabilitation is "demonstrably high", this "germane" factor could outweigh public policy concerns that are traditionally understood as militating against *probation* (see *Public Prosecutor v Justin Heng Zheng Hao* [2012] SGDC 219 at [13], as affirmed by Menon CJ in *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 ("*Adith*") at [14] and Chao Hick Tin JA in *Leon Russel Francis v Public Prosecutor* [2014] 4 SLR 651 ("*Leon Russel Francis*") at [14]). Arguably then, a case for *reformative training* would require something *less* stringent than the standard of "demonstrably high" for a case of probation in terms of the youthful offender's capacity or potential for rehabilitation. In *Adith*, Menon CJ held that the respondent's capacity for rehabilitation was not so demonstrably high that a term of probation was sufficient, and instead felt that a sentence of reformative training would have been more appropriate.

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[9] Prosecution's submissions, at [80].

29 Thus, in situations where a youthful offender's rehabilitative prospects are good, rehabilitation may not be outweighed by the need for deterrence despite the gravity of the offence committed by the youthful offender. The courts have therefore held that rehabilitation still remained a dominant sentencing consideration and imposed either probation or reformative training, even when serious offences such as drug-related offences (see *Adith* and *Leon Russel Francis*), mischief by fire and harassment of debtors of unlicensed moneylenders (see *Nur Azilah bte Ithnin v Public Prosecutor* [2010] 4 SLR 731 ("*Nur Azilah*")), armed robbery on a public bus (see *Public Prosecutor v Mohammad Fareez Bin Rahmat* [2010] SGDC 99) and causing hurt by dangerous weapons (see *Public Prosecutor v Muhammad Bahri Anwar Bin Mohamed Rani* [2008] SGDC 235, which like in the present case involved injuries arising from the use of knives in broad daylight in a public place) were committed by youthful offenders.

30 In the light of this, apart from a consideration of the *Boaz* factors, it would still be necessary to consider *all* the relevant facts and circumstances which ultimately aid the court in achieving the right balance between deterrence and rehabilitation when sentencing a young offender. In the delicate balancing exercise, one of the key considerations would in my view be *the rehabilitative potential of the young offender*.

Second step: selection of the appropriate sentence

31 In the present appeal, the sentences in contest were between on the one hand imprisonment and caning, and on the other reformative training. Reformative training would substitute *both* imprisonment and caning: see *Ng Kwok Fai v Public Prosecutor* [1996] 1 SLR(R) 193 at [7]; and also Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009)

at pp 1020–1022. While reformative training offers the court a "middle ground" that incorporates both elements of rehabilitation and deterrence (see *Boaz* at [36]–[38]; as well as *Al-Ansari* at [57]–[58]), imprisonment would only be appropriate for youthful offenders when rehabilitation has been so overshadowed by deterrence as a dominant sentencing consideration. After all, there is public interest in both ensuring that young offenders are rehabilitated (see *Maurice Mok* at [23], citing *R v Smith* [1964] Crim LR 70) and in giving effect to both general and specific deterrence. Thus, the fulcrum between them would have to be placed such that the sentencing considerations are balanced appropriately.

32 In *Al-Ansari* at [61], Rajah JA recognised that imprisonment would be appropriate in "dire situations" where both the offence(s) was heinous *and* the young offender was not suitable for rehabilitative sentencing options:

> If the offence is so heinous **and** the young offender so devoid of any realistic prospect of being reformed then deterrence must form the *dominant* consideration, **and the statutorily prescribed punishment (probably imprisonment) for the offender would be the obvious choice**. I should add that even in such dire situations, the rehabilitation of the offender has not been cast aside; indeed, the present prison environment (assuming imprisonment is ordered) does provide some form of rehabilitation as well. It is, however, not tailor-made for young offenders unlike reformative training that is implemented in a special facility. [emphasis in bold added]

33 There is still, however, a "measure of rehabilitation" even if imprisonment is imposed on youthful offenders, as the Prosecution rightly submitted.[10] As noted in *Boaz* at [34], when a court determines that rehabilitation remains a primary consideration, the court can consider one from among the whole gamut of sentencing options at its disposal, such as

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[10] Prosecution's submissions, at [81].

community-based rehabilitation, probation, placement in a juvenile rehabilitation centre, reformative training, fines, caning and *imprisonment*.

My decision

34 It is established that an appellate court can interfere in a sentence in the following circumstances (see *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [14]) where the sentencing judge:

(a) made the wrong decision as to the proper factual matrix for the sentence;

(b) erred in appreciating the material before him;

(c) erred in principle in pronouncing the sentence that he did; or

(d) imposed a manifestly excessive or manifestly inadequate sentence.

35 The Appellant's argument in this appeal was that the sentence of imprisonment and caning was wrong in principle or manifestly excessive and that a sentence of reformative training should have been imposed instead.

Rehabilitation diminished but not eclipsed in the sentencing matrix

36 The focus in the proceedings below and in the submissions of the appeal before me was largely on the grievous hurt offence. To a certain extent, I recognised that the grievous hurt offence was apparently more serious than the rioting offence, and was the one that attracted public attention as well, due to the attack occurring in broad daylight in a school campus and the fact that many video clips of the incident were circulating on the Internet. However, the principled approach in sentencing youthful offenders would be to first

consider the *Boaz* factors with regard to *all* the offences committed by the youthful offender in totality, and not merely focus on only the seemingly most serious of them. Although the "offence" in the *Boaz* factors listed by Menon CJ (and for that matter, in the factors listed in *Al-Ansari* too) was phrased in singular terms (see above at [23]–[24]), Menon CJ clearly meant for the inquiry to contemplate *all* offences committed. This was evident from his discussion of past examples where rehabilitation yielded its usual primacy in the sentencing of youthful offenders. He cited *Public Prosecutor v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 at [31] of *Boaz* as a "clear example of a case where the *offences* were sufficiently serious and the actions of the offender were sufficiently outrageous that rehabilitation had to yield to other sentencing considerations" (emphasis added). In his discussion of his unreported *ex tempore* decision in *Long Yan v Public Prosecutor* Magistrate's Appeal No 9015 of 2015 (16 July 2015) at [33] of *Boaz* as well, he pointed out that he had noted the gravity of the "offences" and the harm caused.

37 Thus, I considered the four *Boaz* factors with regard to the Appellant's offences and circumstances and reached the conclusion that rehabilitation still retained its importance in the sentencing matrix, despite being diminished by the need for deterrence due to the seriousness of the offences and the harm caused. Courts will usually, though not inexorably, place rehabilitation at the forefront of sentencing considerations when it comes to youthful offenders: see *Maurice Mok* at [21] and [25]. In the present case, I was of the view that the principle of deterrence assumed a great importance, but not to the extent of eclipsing that of rehabilitation.

Gravity of the offences and harm caused

38 I agreed with the District Judge's conclusion that the offences committed by the Appellant, especially the grievous hurt offence, necessitated that imposition of a *deterrent* sentence. For the grievous hurt offence, general deterrence - to educate members of the public and deter like-minded persons from acting similarly - assumed great significance due to the fact that public disquiet was occasioned when the attack occurred in broad daylight in a school campus. It was indeed an "audacious display of such stark violence" at an institution of learning (see GD at [19]). Specific deterrence was also relevant since the grievous hurt offence had involved some degree of premeditation, which the District Judge had rightly appreciated (see GD at [21]). The Appellant admitted that he had intended to use the knife on the victim and had kept it in his locker for use against the victim. As for the rioting offence, it was serious in itself with it being a group offence where the Appellant and five others had confronted and attacked an innocent victim while he was *outnumbered* in a *public place* at East Coast. Some element of general deterrence would be relevant.

Considering past cases where imprisonment was imposed

39 In response to the Appellant's comparison of the present case to that in *Al-Ansari* where the accused's sentence of probation was substituted with a sentence of reformative training upon appeal, the Prosecution submitted that "it would not be fruitful to compare every single case where reformative training [had] been ordered to determine whether this particular case was grave or otherwise" and that each case turns on its own facts.[11] In *Al-Ansari*, a 16-year-old youthful offender was sentenced to reformative training on appeal

[11] Prosecution's submissions, at [93].

after pleading guilty to one count of robbery at night under s 392 (read with s 34) of the Penal Code. Rajah JA noted that despite the "need for a higher level of deterrence" (at [86]) due to the seriousness of the offence and the degree of planning and deliberation, rehabilitation still remained "a valid and vital consideration to be taken into account" (at [81]) when balancing the sentencing considerations, due to the offender's young age, the fact that he had no antecedents, and the overall seriousness of the offence when juxtaposed against more serious cases.

40 Yet in its own submissions, the Prosecution ironically pointed out three cases which had circumstances of allegedly "equal or lesser gravity" than the present case and where imprisonment had been imposed on young offenders: *Public Prosecutor v Al-Fazli bin Amir Ali* Magistrate's Appeal 122 of 2000/01 ("*Al-Fazli*"), *Thulasidas s/o Sahadevan v Public Prosecutor* Magistrate's Appeal 105 of 2001 ("*Thulasidas*"), and *Public Prosecutor v Muhammad Nuzaihan bin Kamal Luddin* [1993] 3 SLR(R) 653 ("*Muhammad Nuzaihan*").

41 In *Al-Fazli*, a 16-year-old offender pleaded guilty to a charge of doing a rash act to endanger the personal safety of others by throwing down 13 durian husks from the window of a 13th floor flat. The trial court imposed a sentence of one week's imprisonment and a $250 fine; the Prosecution discontinued its appeal. As the Prosecution itself acknowledged in its own submissions,[12] "unreported cases should usually be treated with caution". Without the benefit of having sight of the reasoning of the sentencing judge, the weight of such a precedent would be undoubtedly very low.

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[12] Prosecution's submissions, at [97].

42 Similarly, *Thulasidas* was an unreported case where a 17-year-old offender was sentenced to 24 months' imprisonment and six strokes of the cane for being in a group of seven that attacked a victim several times until he fell to the ground, causing him to sustain a fracture of the tip of his nose, haematomas and swollen lips. Unfortunately, the offender's appeal lapsed and did not come to fruition to validate the trial court's decision.

43 The last case of *Muhammad Nuzaihan* cited by the Prosecution concerned three charges under the Computer Misuse Act (Cap 50A, 1994 Rev Ed) ("CMA"). On appeal, imprisonment was imposed instead of the order of probation awarded in the proceedings below. However, other than demonstrating the fact that there could be instances where general deterrence could come to the fore and eclipse rehabilitation where the "public interest" demanded so (at [20]), this case was of little relevance since it would be futile to compare the seriousness of offences across different types of offences. The public interest concerns surrounding cyber-crime offences under the CMA would undoubtedly be irrelevant in the present case.

44 Thus, these authorities cited were of little precedential use in aiding my prioritisation of the sentencing principles of rehabilitation and deterrence in the present case. Having said all these, did the two offences committed by the Appellant amount to a situation where the need for deterrence so overwhelmed and eclipsed the usual dominant principle of rehabilitation for the Appellant, who was only 16 and 15 years of age at the time of the commission of the two offences?

Offender not hardened and recalcitrant; rehabilitative sentencing option viable

45 Though the District Judge was correct to hold that the offences committed by the Appellant were serious and egregious, he had not sufficiently appreciated the reformative prospects of the Appellant. In fact, in applying the *Boaz* factors in the first stage of the inquiry, it would seem that he had only considered the first two factors without addressing his mind to the last two factors at all (see GD at [14]–[27]). Although satisfying any *one* of the *Boaz* factors in an appropriate case might well be *sufficient* to hold that rehabilitation had been displaced as the dominant consideration, it would still be necessary to take into account all the facts and circumstances which ultimately aid the court in achieving the right balance between deterrence and rehabilitation. In prioritising the relevant principles, a sentencing judge should not hold that deterrence has displaced rehabilitation without carefully evaluating the rehabilitative potential of the young offender. Doing otherwise would not be adhering to the trite principle that rehabilitation is the dominant sentencing consideration when dealing with youthful offenders.

46 In the present case, the Appellant was not a hardened and recalcitrant offender. He had no antecedents and was assessed to have only a moderate risk of re-offending in his psychological[13] and probation reports.[14] His history of aggressive behaviour was not frequent or chronic. I was also of the view that the remorse demonstrated by the Appellant was genuine. Apart from pleading guilty in the proceedings below, he had also acknowledged his wrongdoing and expressed regret for his actions.[15] The testimonials given by

[13] Psychological Report, at para 38 (ROP Bundle, at p 327).

[14] Probation Report, at para 6.1 (ROP Bundle, at p 318).

[15] *Ibid*, at p 20 (ROP Bundle, at p 317).

the principal of Northlight School as well as the staff at MWH attested to the Appellant's resilience, diligence and motivation to work on his education and future goals, which was a consistent theme in the testimonials.[16] In terms of his rehabilitative prospects, the senior probation officer was of the view that they were positive:[17]

> *His progress at school and at MWH show that with the right guidance and structure, he can make positive changes*. He has also *taken steps to lead a more pro-social lifestyle since the arrest in Mar 2015*. [The Appellant] also has personal goals for himself and is keen to improve himself. To be able to achieve his goals, he will need to learn to consistently think and behave responsibly. [emphasis added]

47 The probation officer eventually did not recommend probation as she felt that the Appellant needed a "closed structured environment for his continued rehabilitation" to provide a "safe setting for him to focus on his rehabilitation". As I noted above at [4], the Appellant had made positive progress in school and at MWH since his admission into the home. However, the offences in the present case overshadowed his progress. Nonetheless, I noted that, to the Appellant's credit, he had taken pro-active steps after his arrest to lead a more pro-social lifestyle since. After surrendering himself to the police when they looked for him at his grandmother's house, he assisted with investigations. He also ceased association with negative peers and stopped engaging in late night activities.[18] Even though his Care and Protection Order expired in August 2015, he voluntarily continued residing at MWH and completed his GCE "N" Levels examinations as well. Overall, the probation officer was of the positive opinion that the Appellant had "presented himself as a resilient, mature and intelligent youth who reflected on and

[16] ROP Bundle, at pp 197–205.

[17] *Ibid*, at para 6.3 (ROP Bundle, at p 319).

[18] *Ibid*, at p 20 (ROP Bundle, at p 317).

accepted responsibility for his actions."[19] Notably, the Appellant had also indicated that he wanted to start his life afresh after serving his sentence, and wanted to continue his education, hoping that it would help him lead a pro-social lifestyle in the future.[20] In his psychological report, it was similarly observed that the Appellant had good rehabilitative potential:[21]

> [The Appellant]'s risk may be attenuated in a structured environment. In spite of poor parental support, his positive progress in MWH and school over the past three years evinced resilient personality traits and responsiveness to structured guidance.

48 In my view, it was important to note the Appellant's potential and motivation for reformation, as well as the circumstances that had contributed to him engaging in antisocial behaviour. In *Nur Azilah*, Chao JA had felt that the sentencing judge had not given sufficient consideration to the surrounding circumstances under which the appellant had become a runner for loan sharks and why she had come to commit her offences (at [21]):

> Importantly, her degree of culpability must be acutely assessed in the light of her surrounding circumstances. As stated in the probationary and reformative training reports, the *Appellant did not come from a privileged background and her family was struggling to make ends meet.* On the evidence, it was my view that the Appellant started to work for the unlicensed moneylenders out of desperation, rather than greed, in order to support herself. In that frame of mind, she carried out what was instructed by the unlicensed moneylenders. As stated in *Mok Ping Wuen Maurice* at [21], the courts should presume that youths are impressionable and are unlikely to know the full consequences of their actions. It seemed to me all the more so in this case. I further venture to think that *her family environment and violence could very well have affected her value judgments on the propriety of her*

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[19] *Ibid*, at para 6.3 (ROP Bundle, at p 319).

[20] *Ibid*, at p 318 (ROP Bundle, at p 318).

[21] Psychological Report, at para 41 (ROP Bundle, at p 327).

> *actions*, and thus contributed to her inability to fathom the full consequences of her actions. [emphasis added]

49 Thus, Chao JA came to the conclusion that that was not an appropriate case to depart from the *norm* of regarding rehabilitation as the primary objective in the treatment of young offenders, despite the seriousness of the offences committed, and expressed the public interest behind this (at [23]):

> I need hardly state that there are various aspects to society's interests. In my view, it is certainly not in society's interest to see that young offenders become hardened criminals. On the contrary, society would want to see young offenders turning over a new leaf to become law abiding citizens who will make positive contributions to its development.

50 In the present case, insufficient consideration was also given by the District Judge to the unfortunate circumstances of the Appellant that had led to his antisocial behaviour. I only have to cite his psychological report to illustrate this:[22]

> [The Appellant] grew up in an *unstable home environment* characterised by financial difficulties, inconsistent parental care, and domestic violence. The lack of parental supervision and emotional support at home probably led him to gravitate toward neighbourhood peers to seek relatedness. Parents' substance use at home might have also acted as a negative role model for [him], resulting in his *normalisation of antisocial behaviour* at a young age. While these factors might have contributed to [his] susceptibility to an antisocial lifestyle, his witnessing of domestic violence probably had more *direct influence on his use of violence*. Specifically, the *domestic violence during [his] developmental years* might lead him to understand interpersonal relationships through hostile attribution and physical aggression.
>
> …
>
> In addition, the poor supervision in the community also led him to associate with negative peers who *condoned the use of violence*. This in turn maintained his aggressive behaviour in the community.

[22] *Ibid*, at paras 35–36 (ROP Bundle, at pp 326–327).

[emphasis added]

51 The clinical psychologist also assessed that the Appellant's aggressive acts in the slashing incident were "precipitated by the verbal and physical provocation from the victim" when his "hostile misattribution also led him to perceive the victim to be aggressive and provocative".[23] It was clear to me that consideration had to be given to the Appellant's unfortunate background which had resulted in his normalisation of antisocial behaviour, and had led him to understand relationships through hostile attribution and physical aggression.[24] Like how Chao JA noted in *Nur Azilah* (citing *Maurice Mok*), youths are more likely to be impressionable and may not realise the full consequences of their actions. Notwithstanding the seriousness of the offences and the harm caused, I had to take a nuanced view as to the degree of Appellant's culpability and not accord too high a significance to the level of deterrence needed that would replace rehabilitation as the usual dominant sentencing consideration.

52 Thus, taking into account both the need for deterrence and the rehabilitative prospects of the Appellant, I was of the view that rehabilitation as a dominant sentencing consideration was *diminished*, but *not totally eclipsed*.

Reformative training most appropriate

53 In the second step, having established that rehabilitation still remained an important consideration despite the seriousness of the offences committed and the harm caused, I turned to consider the various sentencing options at my

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[23] *Ibid*, at para 37 (ROP Bundle, at p 327).

[24] *Ibid*, at paras 35–36 (ROP Bundle, at p 326).

disposal to decide which was the most appropriate. I concluded that a sentence of reformative training was the most suitable to balance the need for deterrence and the recognition that rehabilitation was still important in the present situation.

54 In *Cheng Thomas v Public Prosecutor* [2000] 3 SLR(R) 828 at [13], Yong CJ recognised that the accused had needed strict guidance and enforced reformation for another shot at rehabilitation and hence upheld a sentence of reformative training:

> Taking into consideration the *young age of the appellant and his unfortunate family background*, I decided that it was appropriate to give him *another chance at rehabilitation*. Since young, the appellant *had lacked proper parental guidance and supervision*, his parents having separated since he was three years old, and this was probably *the fundamental cause of his unruliness*. The appellant was in serious need of some strict guidance and enforced reformation. *This would not be suitably provided in a custodial sentence*. [emphasis added]

55 Similarly here, the Appellant was assessed to require structured guidance to which he had had been responsive to so far, so as to evince his potential for reformation.[25] He needed a "closed, structured environment for his *continued rehabilitation*" (emphasis added).[26] His reformative training suitability report was also positive,[27] indicating that he was suitable for the reformative training regime, with programmes recommended to help him overcome his negative thoughts and underlying violent behaviour, as well as to help strengthen his family network and employment skills to enhance his reintegration potential.

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[25] *Ibid*, at para 41 (ROP Bundle, at p 327).

[26] Probation Report, at para 6.4 (ROP Bundle, at p 319).

[27] Reformative Training Suitability Report (ROP Bundle, at pp 290–297).

56 Ultimately, I felt that it was appropriate to give the Appellant a chance at rehabilitation, considering his unfortunate family background, young age, rehabilitative potential and positive steps taken so far after his arrest. After all, his violence risk had been assessed to be elevated when there was negative peer influence and inadequate pro-social activities.[28] The corrupt influence of a prison environment would thus not be desirable for the Appellant to realise his reformative potential. Reformative training was most appropriate as the Appellant would go through a rehabilitative programme in a structured environment without being exposed to the potentially unsettling influence of an adult prison environment: see *Boaz* at [38].

Conclusion

57 For the reasons stated above, I allowed the appeal against sentence and ordered the Appellant's sentence of 18 months' imprisonment and six strokes of the cane to be substituted with a sentence of reformative training.

58 As the reformative training would be for a minimum of 18 months and a maximum of 36 months, it would be pertinent to note that the period the Appellant would be detained in the reformative training centre would actually be longer than the Appellant's sentence of 18 months' imprisonment, for which he might even be released six months earlier for good behaviour in the latter situation. The Appellant was fully aware of this and still appealed to be sentenced to reformative training with a view to have himself rehabilitated.

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[28] Psychological Report, at para 40 (ROP Bundle, at p 327).

Chan Seng Onn
Judge

Benny Tan, Emmanuel Lee and Justin Tan (Trident Law Corporation) for the Appellant;
Wong Kok Weng and Ho Lian-Yi (Attorney-General's Chambers) for the Respondent.
