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

[2024] SGHC 267

Magistrate's Appeal No 9130 of 2024/01

Between

JCY

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 60 of 2024

Between

JCY

… *Applicant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]
[Criminal Procedure and Sentencing — Sentencing — Young offenders]

JCY
v
Public Prosecutor

[2024] SGHC 267

General Division of the High Court — Magistrate's Appeal No 9130 of 2024/01, Criminal Motion No 60 of 2024
Vincent Hoong J
22 October 2024

22 October 2024

Vincent Hoong J:

Introduction

1 The appellant, whose name has been redacted as JCY (the "Appellant"), pleaded guilty in the District Court to six charges, relating to: (a) three offences of rioting punishable under s 147 of the Penal Code 1871 (2020 Rev Ed) (the "Penal Code"); (b) two offences of sexually penetrating a minor under s 376A(1)(*a*) punishable under s 376A(3) of the Penal Code; and (c) one offence of theft-in-dwelling punishable under s 380 of the Penal Code. With the Appellant's consent, ten further charges were taken into consideration for sentencing. These charges related to further offences of rioting, sexually penetrating a minor and voluntarily causing hurt, amongst others. The Appellant was found suitable for probation and reformative training and ultimately sentenced by the District Judge (the "DJ") to undergo reformative training for a

minimum of six months' detention: see *Public Prosecutor v JCY* [2024] SGDC 183 ("GD").

2 HC/MA 9130/2024/01 ("MA 9130") is the Appellant's appeal against the sentence imposed on the ground that it is manifestly excessive. HC/CM 60/2024 ("CM 60"), meanwhile, is his application to admit further evidence in support of MA 9130.

The application to admit further evidence: CM 60

3 I begin with CM 60. This is the Appellant's application under s 392(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) to admit the following pieces of further evidence for the purposes of MA 9130:

(a) A payment transaction record showing that the Appellant made full restitution for his theft-in-dwelling offence (as well as another theft-in-dwelling offence against the same victim for which he was not charged) in the amount of $210 on 8 October 2024.[1]

(b) A letter by the Appellant's former secondary school principal dated 6 October 2024 "to support his appeal to the Court to [lessen] his sentence".[2]

(c) An exchange of emails between the Appellant's counsel and his current school lecturer dated 4 and 7 October 2024. In response to the former's queries, the latter stated that the Appellant's attitude,

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1 Appellant's Supporting Affidavit in CM 60 dated 10 October 2024 ("Appellant's Supporting Affidavit") at p 6.

2 Appellant's Supporting Affidavit at pp 8–9.

attendance and academic performance had improved in the time since May 2024, when he last corresponded with the Appellant's probation officer to assist in the preparation of the Probation Suitability Report dated 24 May 2024 (the "Probation Report").[3] He further stated that the Appellant's attitude, conduct and attendance during his internship had been reviewed as good by his employer.

(d) A personal letter dated 9 October 2024 by the Appellant "[reflecting] on the latest developments in [his] life, as well as [his] future plans going forward".[4]

4 The admission of fresh evidence in a criminal appeal by an accused person is governed by the three conditions articulated in the English Court of Appeal decision of *Ladd v Marshall* [1954] 1 WLR 1489 of non-availability, relevance and reliability, subject to the important qualification that the first condition of non-availability is less paramount than the other two conditions: *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505 at [72], citing *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 ("*Soh Meiyun*") at [16]. Further, if the application is made following a plea of guilt and the only issue before the court is that of sentencing and not conviction, the court may decide to accord greater latitude to the applicant, not least because if there is a dispute over the matter covered by the new evidence, the court may require the new evidence to be proved (for instance, by remitting the matter to the trial judge to convene a Newton hearing): *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 at [46].

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3 Appellant's Supporting Affidavit at pp 11–13.

4 Appellant's Supporting Affidavit at [8] and pp 15–19.

5 Applying the relevant principles, I disallow the application. I do so because the further evidence adduced by the Appellant does not satisfy the condition of relevance, which requires that the evidence would probably have an important influence, even if not a decisive effect, on the result of the case: *Soh Meiyun* at [14].

6 Beginning with the payment transaction record (see [3(a)] above), I observe that limited mitigating weight should be placed on the act of restitution by the Appellant which it evidences. This was done belatedly and cannot therefore suggest significant remorse on the Appellant's part, even if it nonetheless had the effect of reducing the harm suffered by the victim: *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 at [62]–[63]. In oral arguments before me, counsel for the Appellant conceded that the mitigating weight to be given to his act of restitution was "next to nothing". In any event, the fundamental point is that the theft-in-dwelling offence was only one, and among the least serious, of the Appellant's many offences. Indeed, the DJ did not place significant reliance on this offence in explaining why deterrence and retribution were relevant sentencing considerations in the present case: GD at [53]–[55]. Accordingly, I am satisfied that the Appellant's making of restitution cannot displace any need for deterrence and retribution arising from the totality of his offending conduct. In the premises, I do not consider that it is likely to have an important influence on the result of MA 9130.

7 The various letters and emails adduced by the Appellant (see [3(b)]–[3(d)] above) similarly do not satisfy the condition of relevance. These letters and emails seek essentially to demonstrate the strength of the Appellant's propensity for reform by referring to certain steps he has taken following his commission of the offences. However, in identifying deterrence and retribution

as relevant sentencing considerations, the DJ was influenced by the nature of the offences that the Appellant had committed rather than by the strength or otherwise of his propensity for reform going forward: GD at [53]–[55]. It is therefore hard to appreciate the relevance of these letters and emails. I also observe that the alleged changes in the Appellant's conduct on which they rely are largely very recent in nature, some even post-dating the filing of his Notice of Appeal, and are therefore of highly questionable probative value. Finally, the letter of support by the Appellant's former secondary school principal, in particular, is entirely reliant on a single recent conversation with the Appellant. All it adds to the post-offence steps allegedly taken by the Appellant, which were self-reported by him during that conversation and are recounted in the letter, is his former principal's opinion that he has undergone a "significant change" since their last interaction, including "a big difference in the way he looked, as well as the way he engaged me in conversation".[5] With respect, this opinion falls well short of satisfying the condition of relevance.

8 For the reasons above, I dismiss CM 60.

The appeal against sentence: MA 9130

9 I now turn to MA 9130. The Appellant's case is that the sentence of reformative training is manifestly excessive and should be substituted with an order of probation on the terms recommended in the Probation Report. The Probation Report had recommended the Appellant for 21 months' split probation (16 months' intensive, five months' supervised) on conditions including 12 months' residence in the Singapore Boys' Hostel.

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[5] Appellant's Supporting Affidavit at p 8.

10 The two-stage sentencing framework applicable to youthful offenders is well established: see, *eg*, *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [77]–[78] and *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [28]. First, the court identifies and prioritises the primary sentencing considerations. Second, the court selects the appropriate sentence that would best meet those sentencing considerations.

Stage 1: Identification of the primary sentencing considerations

11 I begin with the first stage. There is no dispute that rehabilitation remains the primary sentencing consideration on account of the Appellant's youth. In the DJ's view, however, deterrence and retribution were also important sentencing considerations given the seriousness of the offences and the harm caused to their victims: GD at [52]–[55]. Having regard to the relevant factors (see *Boaz Koh* at [30] and *Public Prosecutor v ASR* [2019] 1 SLR 941 at [101]–[102]), I entirely agree with the DJ's assessment. I do not accept the Appellant's submission that the DJ placed undue weight on deterrence and retribution as sentencing considerations.[6]

12 First, the Appellant's offences were serious. The offences of rioting and sexually penetrating a minor, in particular, are intrinsically very serious. This much is clear from their statutorily prescribed punishments. It is also relevant that the Appellant was no bystander in the rioting offences but actively participated in the infliction of violence. Further, on one occasion, he initiated the attack by asking the headman of his gang for permission to "whack" the victim. On another occasion, he suggested a suitable location for the commission of a further attack on a separate victim. As for the offences of

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6 Appellant's Written Submissions dated 11 October 2024 ("AWS") at [8], [26].

sexually penetrating a minor, the Appellant had the advantage of several years over the victim, being 16 years old at the time while she was only 13. It is irrelevant that he was apparently unaware of the unlawfulness of his conduct because ignorance of the law is no excuse, whether to exculpate from criminal liability or to mitigate in sentencing: *Public Prosecutor v Tan Seo Whatt Albert and another appeal* [2019] 5 SLR 654 at [48].

13 Second, the Appellant's offences caused appreciable harm to their victims. The victims of his rioting offences all sustained varying degrees of physical injury. More significantly, the 13-year-old minor with whom he engaged in unprotected sex, ejaculating into her vagina on at least one occasion, was exposed to the risk of pregnancy.

14 Third, I acknowledge that the Appellant has not reoffended since February 2023. I therefore hesitate to classify him as a hardened and recalcitrant offender. Nonetheless, I register my grave concern that the Appellant committed a large number of offences within a short span of time. Even more troubling, in my view, is that he committed most of these offences while on police bail following his arrest for a rioting offence. As noted in the Probation Report, this indicated his "anti-social attitude, blatant disregard for the law, minimization of the severity of the offences, and failure to internalize lessons learned".[7] I also observe that the rioting and hurt offences point to a worrying overall tendency on the Appellant's part to resort to violence, especially in a group setting. In the circumstances, it is unsurprising that the Appellant's risk of re-offending was assessed in the Probation Report as high compared to other male offenders.[8]

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7 Probation Report at p 2.

8 Probation Report at p 2.

15 I address one further submission by the Appellant. He submits that the DJ placed insufficient weight on his young age at the time of offending and, consequently, placed undue weight on the need for specific deterrence. In support of this argument, he cites *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 ("*A Karthik*") at [37]–[42] for the proposition that the actions of a young offender may be more readily excused on the grounds of his youthful folly and inexperience.[9] This submission betrays a misunderstanding of *A Karthik*. The court in *A Karthik* was explaining why "youthful offenders should *ordinarily* be sentenced on the basis of rehabilitation being the *dominant* sentencing consideration" [emphasis added]: *A Karthik* at [37]. However, there is no dispute in the present case that rehabilitation remains the dominant sentencing consideration on account of the Appellant's youth. Equally, there is no dispute that the primacy of rehabilitation may be diminished by the circumstances of the case or even eclipsed by considerations such as deterrence or retribution. This was recognised in *A Karthik* itself at [65]. Indeed, the Appellant himself concedes that "both general and specific deterrence definitely feature herein (albeit a question of extent)".[10] Accordingly, *A Karthik* does not assist the Appellant. Notwithstanding his young age, I am satisfied that the DJ correctly identified and gave appropriate weight to specific deterrence as a sentencing consideration.

Stage 2: Selecting the appropriate sentence

16 I now turn to the second stage of the sentencing framework. I have concluded at the first stage that, although rehabilitation remains the dominant sentencing consideration, deterrence and retribution are also relevant in the

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9 AWS at [9]–[20].

10 AWS at [18].

present case. In my judgment, it follows as a matter of principle that reformative training would be a more appropriate sentencing option than probation. This is because the deterrent effect of probation is "relatively modest in nature": *Al-Ansari* at [56]. Conversely, although reformative training is, like probation, a rehabilitative sentence, it also carries a significant deterrent effect: *Al-Ansari* at [47] and [57]–[58]; *Boaz Koh* at [36]–[38]. For this reason, the authorities are clear that reformative training will generally be the appropriate sentence where, although rehabilitation remains the dominant sentencing consideration, a degree of deterrence is also required: *Boaz Koh* at [39]; *Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 ("*Ong Jack Hong*") at [14].

17 The Appellant makes much of the fact that his recommended conditions for probation include 12 months' residence in the Singapore Boys' Hostel. He observes that this is longer than the minimum period of six months' detention in the reformative training centre to which he has been sentenced. He also notes that the Singapore Boys' Hostel is designated as an "approved institution" under the Probation of Offenders (Approved Institution) Order 2011 for the reception of persons who may be required to reside therein by a probation order and cannot be characterised as a "soft" option.[11] Drawing attention to these features, the Appellant advances the following related arguments:

(a) First, the Appellant submits that an order of probation on the recommended conditions would give adequate effect to any need for deterrence and retribution.[12]

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11 AWS at [27].

12 AWS at [26]–[28].

(b) Second, the Appellant submits that the DJ was wrong to describe, without qualification, the deterrent effect of a probation order as limited in nature. In particular, he argues that the DJ was wrong to rely on *Al-Ansari* for this proposition when the court in *Al-Ansari* had distinguished "intensive probation" from "administrative probation" and "supervised probation" and acknowledged that intensive probation may exert some level of deterrence: *Al-Ansari* at [56].[13]

(c) Third, the Appellant submits that the DJ was insufficiently attentive to the fact that, in *Boaz Koh*, the offender had sought an order of probation incorporating a residential requirement in a private residential hostel as opposed to an approved institution like the Singapore Boys' Hostel.[14]

(d) Fourth, the Appellant submits that the DJ erred in failing to acknowledge the observation in *Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300 ("*Praveen s/o Krishnan*") at [34] that "probation with the additional condition of hostel residence of a specified duration strikes a good balance between rehabilitation and deterrence".[15]

18 It is not necessary for me to deal individually with these arguments. They assume in common that probation orders which incorporate a residential requirement in an approved institution are fundamentally and qualitatively different from probation orders which do not. I cannot agree with this premise.

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13 AWS at [29]–[35].

14 AWS at [36].

15 AWS at [37]–[41].

To be sure, I accept that such probation orders will ordinarily achieve a greater deterrent and perhaps also retributive effect than other types of probation orders. However, as they too lack a carceral element, it cannot be seriously contended that they are comparable in their deterrent or retributive effect to reformative training. As discussed earlier (see [1616] above), the authorities state that reformative training should ordinarily be preferred over probation where a measure of deterrence is required alongside the primary sentencing consideration of rehabilitation: *Boaz Koh* at [39]; *Ong Jack Hong* at [14]. This proposition has consistently been expressed in general terms. There is simply no indication that its applicability is qualified where the conditions of probation include a residential requirement in an approved institution. Even in *Al-Ansari*, the court was only prepared to say, in fairly circumspect terms, that probation orders involving a specified period of stay "*may* have *some* level of deterrence for *some* young offenders" [emphasis added]: *Al-Ansari* at [56]. Returning to the present case, I am satisfied that an order of probation, even one incorporating a residential requirement in the Singapore Boys' Hostel, would not give sufficient effect to the need for deterrence and retribution engaged by the Appellant's offences.

19 Contrary to the Appellant's invitation,[16] I also do not consider it necessary or helpful to provide specific guidance on the circumstances in which it will be appropriate to sentence a young offender to probation on conditions including a residential requirement in an approved institution. Given that there is no fundamental distinction in kind between such probation orders and other types of probation orders, the appropriateness of such probation orders falls to be determined by reference to the established legal principles. Any finer

[16] AWS at [47]–[53].

differences in degree between such probation orders and other kinds of probation orders in their deterrent effect have also already been recognised in the existing authorities cited by the Appellant himself: see *Al-Ansari* at [56] and *Praveen s/o Krishnan* at [34].

20 For completeness, the Probation Report and the Reformative Training Report dated 11 April 2024 (the "Reformative Training Report") also draw attention to: (a) the limited ability of the Appellant's mother to effectively supervise him; and (b) the Appellant's lack of engagement in structured activities and poor attendance in school.[17] These raise certain questions as to whether the conditions exist to make probation viable and fortify my view that reformative training is the more appropriate sentencing option. However, leaving this point aside, I repeat that an order of probation would not give adequate effect to the need for deterrence and retribution. The appeal against sentence can be disposed of on this ground of principle alone.

21 For the reasons above, I dismiss MA 9130.

Conclusion

22 In summary, I dismiss CM 60 and MA 9130.

Vincent Hoong
Judge of the High Court

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[17] Reformative Training Report at pp 5–7; Probation Report at pp 2, 8–9, 16.

Josephus Tan, Cory Wong Guo Yean and Mohyong Shiteng Devlin (Invictus Law Corporation) for the appellant;
Terence Chua and Darren Ang (Attorney-General's Chambers) for the respondent.