Amin bin Abdullah
v
Public Prosecutor

[2017] SGHC 215

High Court — Magistrate's Appeal No 9308 of 2016
Sundaresh Menon CJ, Chao Hick Tin JA and See Kee Oon J
9 May 2017

Criminal procedure and sentencing — Appeal

Criminal procedure and sentencing — Sentencing — Benchmark sentences

Criminal procedure and sentencing — Sentencing — Principles

29 August 2017

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 Under the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"), certain categories of offenders are exempted from caning. The CPC also empowers the courts to enhance the imprisonment terms of such offenders in lieu of caning, by up to 12 months. Case law has not spoken with one voice on when an offender's sentence should be enhanced in lieu of caning ("the enhancement question"), and if so enhanced, how the extent of such enhancement should be determined ("the duration question").

2 These questions arose in the present appeal. At the conclusion of the oral arguments, we dismissed the appeal and gave brief reasons. We indicated that we would elaborate by furnishing detailed grounds for our decision. This we now do. In these written grounds, we provide guidance on both the enhancement question and the duration question. We first discuss the law and the current sentencing practice of the courts. We then set out the approach that should guide the courts in this context. We finally address the present appeal.

Brief Facts

3 Amin Bin Abdullah ("the Appellant") was convicted of one charge of trafficking in 13.23g of diamorphine, an offence under s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") and punishable under s 33(1) of the MDA. He also pleaded guilty to one charge of possession of 0.27g of diamorphine, an offence under s 8(*a*) of the MDA and punishable under s 33(3) of the MDA. For the trafficking charge, he was sentenced to the mandatory minimum of 20 years' imprisonment and 15 strokes of the cane. For the possession charge, he was sentenced to three years' imprisonment. Both sentences were ordered to run concurrently, for an aggregate sentence of 20 years' imprisonment and 15 strokes of the cane.

4 The Appellant was later certified by a medical officer to be permanently unfit for caning. The learned district judge ("the District Judge") then enhanced the original sentence by 30 weeks' imprisonment in lieu of caning. The Appellant appealed against this enhancement, contending that it was manifestly excessive. This required us to consider the applicable principles. Because we thought that the issues raised were somewhat complex, we appointed Mr Benjamin Koh Zhen-Xi ("Mr Koh") as *amicus curiae*. We are deeply grateful for the extremely helpful submissions that he made.

The current state of the law

An introduction to the relevant statutory provisions

5 There are three relevant categories of offenders who are exempted from caning:

(a) All female offenders and male offenders aged above 50 at the time of caning: see s 325(1) of the CPC;

(b) Offenders who are sentenced at the same sitting of the court to more than the specified limit of 24 strokes of the cane (in the case of an adult) or 10 strokes of the cane (in the case of a juvenile): see s 328(1) read with s 328(6) of the CPC; and

(c) Offenders who are certified to be medically unfit for caning: see s 331 of the CPC.

6 We refer to these three categories of offenders collectively as "the exempted offenders".

7 The CPC also empowers the court to enhance the sentences of exempted offenders by up to a maximum of 12 months' imprisonment. The relevant provisions are:

(a) Section 325(2) of the CPC, for offenders exempted under s 325(1) of the CPC;

(b) Section 328(2) of the CPC, for offenders exempted under s 328(1) of the CPC; and

(c) Section 332(2)(*b*) of the CPC, for offenders exempted under s 331 of the CPC.

8 While the latter provisions are drafted in similar terms, they have different origins which we trace below.

Section 325(2) of the CPC

9 Section 325 of the CPC provides:

> **Execution of sentence of caning forbidden in certain cases**
>
> 325.—(1) The following persons shall not be punished with caning:
>
> (*a*) women;
>
> (*b*) men who are more than 50 years of age at the time of infliction of the caning; and
>
> (*c*) men sentenced to death whose sentences have not been commuted.
>
> (2) Subject to any other written law, if a person is convicted of one or more offences punishable with caning (referred to in this section as the relevant offences) but the person cannot be caned because subsection (1)(*a*) or (*b*) applies, the court may, in addition to any other punishment to which that person has been sentenced, impose a term of imprisonment of not more than 12 months in lieu of the caning which it could, but for this section, have ordered in respect of the relevant offences.
>
> (3) A court may impose a term of imprisonment under subsection (2) notwithstanding that the aggregate of such term and the imprisonment term imposed for any of the relevant offences exceeds the maximum term of imprisonment prescribed for any of those offences.
>
> …

10 While the prohibition against caning the classes of persons set out in s 325(1) of the CPC has long existed, s 325(2) of the CPC is a relatively new provision. It was introduced when the present CPC came into force on 2 January 2011, *vide* Criminal Procedure Code (Commencement) Notification 2010

(S 776/2010). During the Parliamentary debates, the Minister for Law explained that the underlying rationale was to "give the Court discretion in exercising parity between co-accused persons, one of whom may be caned and the other may not" (see *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422 (K Shanmugam, Minister for Law)).

11 It should be noted, however, that even though the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the 1985 CPC") did not specifically provide for the sentences imposed on this category of exempted offenders to be enhanced, the courts did from time to time impose higher sentences on accused persons on account of the fact that they could not be caned. We set out some of the key cases.

Cases decided under the 1985 CPC

12 We begin with the 1991 decision of the Court of Appeal in *Er Boon Huai and another v Public Prosecutor* [1991] 2 SLR(R) 340 ("*Er Boon Huai*"). There, the appellant, a drug trafficker, was over the age of 50 and not liable for caning. The High Court imposed an additional three-year imprisonment term on the appellant on account of the exemption and sentenced him to 27 years' imprisonment in total. The appellant's co-accused, whose culpability was not dissimilar, received a sentence of 24 years' imprisonment and 15 strokes of the cane. On appeal, the Court of Appeal set aside the additional three years' imprisonment, reasoning as follows (at [11]):

> Section 231 [of the 1985 CPC] places the three categories of persons stated therein in a special position in that any provision in any law imposing a liability to caning would not be applicable to such persons. That being so, unlike the first appellant, the maximum penalty that the second appellant was liable for was therefore 30 years' imprisonment (without any caning) and the minimum penalty was 20 years' imprisonment (without any caning). The additional three years' imprisonment imposed on

> the second appellant in lieu of the caning cannot be justified as the second appellant, *in the absence of any facts to distinguish his case from that of the first appellant's*, must be sentenced to the same term of imprisonment as the first appellant for this offence. [emphasis added]

13 *Er Boon Huai* has been interpreted in different ways. Some have understood it to mean that it proscribes the imposition of an enhanced sentence of imprisonment in lieu of caning: see *Mallal's Criminal Procedure* (Noor Azman bin Adnan & James Selladurai Thanjong Tuan gen eds) (LexisNexis, 7th Ed, 2012) at para 1401. Others have seen it as standing for the proposition that an additional term of imprisonment in lieu of caning should not be ordered "in the absence of valid reasons": see, for example, Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) ("*Sentencing Principles in Singapore*") at paras 30.054–30.055.

14 The authors of *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie & Mohamed Faizal gen eds) (Academy Publishing, 2012) suggest at para 16.142 that *Er Boon Huai* was legislatively overruled by the enactment of s 325(2) of the CPC, but this has not been judicially explored. It may be noted that *Er Boon Huai* was not referred to in the subsequent cases decided under the 1985 CPC, to which we now turn.

15 Seven years later, Tay Yong Kwang JC (as he then was) decided *Public Prosecutor v Koh Jin Lie* [1998] SGHC 180 ("*Koh Jin Lie*"). The 52-year-old accused in *Koh Jin Lie* pleaded guilty to a charge of attempted rape of a girl below 14 years of age, which was punishable with a sentence of between eight and ten years' imprisonment, and a mandatory sentence of 12 strokes of the cane. Tay JC noted as follows (at [8]):

> In my opinion, a sentence of imprisonment can and should be enhanced in appropriate cases, where caning is avoided for one reason or another.

16 Nevertheless, Tay JC did not enhance the accused's imprisonment term. He explained that he had proceeded in this way in order to preserve an incentive for accused persons like the offender in that case to plead guilty in such cases, because proving guilt at trial might otherwise be difficult and would almost certainly be stressful for the victim. Keeping in mind that the sentencing range available to him was between eight and ten years' imprisonment, Tay JC reasoned that "[a] sentence which approaches the higher end of the scale would give little incentive for offenders like the present Accused to plead guilty" (at [10]).

17 Although no additional term of imprisonment was ordered in *Koh Jin Lie*, Tay JC had clearly endorsed the possibility of such enhancement and in *Public Prosecutor v Yap Siew Luan* [2002] SGHC 93 he did enhance the sentence where an offender was exempted from caning. There, the female accused pleaded guilty to importing into Singapore a controlled drug, an offence that carried a minimum sentence of 20 years' imprisonment and 15 strokes of the cane. Having decided that 22 years' imprisonment would otherwise be the appropriate sentence for this accused, Tay JC added two years' imprisonment in lieu of the 15 strokes of the cane (at [18]–[20]).

18 In the next two cases, both of which were decided by Choo Han Teck J, the High Court declined to impose an imprisonment term in lieu of caning. The first of these is *Public Prosecutor v Kalathithara Subran Hilan and others* [2003] SGHC 113 ("*Subran*"), a case involving four accused persons. Two accused persons, one male and one female, pleaded guilty to the abetment of the rape of a 13-year-old girl. The male accused was sentenced to 11 years' imprisonment and six strokes of the cane, and the female accused was sentenced to 11 years' imprisonment. Choo J made it clear, without elaborating, that while he had considered increasing the sentence of the female offender in lieu of

caning, he ultimately decided that "an adjustment upwards [was] not necessary" (at [5]). There was nothing in the decision to suggest that the female accused was less culpable than the male accused.

19 The second decision is *Public Prosecutor v Rahmat Bin Abdullah and another* [2003] SGHC 206, which concerned drug trafficking by two accused persons in a quantity that attracted a minimum sentence of 20 years' imprisonment and 15 strokes of the cane. Both accused persons were sentenced to 22 years' imprisonment, and the younger accused was also sentenced to 15 strokes of the cane. After observing that there was nothing very significant on the facts of the case to distinguish the sentences of the two accused persons, Choo J considered whether the sentence of the older accused should be enhanced in lieu of caning. He decided that given the age of the older accused person (59 years old) and his sentence of 22 years' imprisonment, no enhancement was necessary (at [10]).

Cases decided under the current CPC

20 We turn to the more recent cases decided under the current CPC.

21 *Public Prosecutor v Krishnasamy s/o Suppiah* [2011] SGDC 321 ("*Krishnasamy*") was decided by See Kee Oon SDJ (as he then was). *Krishnasamy* involved a 52-year-old offender convicted of two counts of drug consumption (together with a possession charge which is not material for our purposes). The offender had been charged once in November 2010 and subsequently reoffended while on bail. These two drug consumption charges carried minimum sentences of seven years' imprisonment and six strokes of the cane.

22 See SDJ sentenced the accused to seven years' imprisonment for the first charge, and eight years' imprisonment for the second charge. In relation to the second charge, See SDJ noted the availability of s 325(2) of the CPC, but did not, in the event, invoke that provision to justify the imposition of the higher sentence of eight years' imprisonment, which was above the minimum sentence. Instead, he justified this on the ground that the accused had reoffended while on bail (at [12]).

23 In 2016, Tay Yong Kwang J (as he then was) delivered two High Court decisions on s 325(2) of the CPC, namely *Public Prosecutor v Nguyen Thi Thanh Hai* [2016] 3 SLR 347 ("*Nguyen*") and *Public Prosecutor v Kisshahllini a/p Paramesuvaran* [2016] 3 SLR 261 ("*Kisshahllini*"). These cases were relied on by the Prosecution in the present appeal. Both involved female drug importers whose (unrelated) offences attracted minimum sentences of 20 years' imprisonment and 15 strokes of the cane. In both cases, Tay J invoked s 325(2) of the CPC and enhanced the sentences of both accused persons by the maximum 12 months' imprisonment. In *Kisshahllini* at [16], Tay J reasoned as follows:

> In respect of the present charge, the MDA prescribes a mandatory sentence of 15 strokes of the cane. That being the case, the court should consider imposing an additional imprisonment term in respect of offenders who are exempted from caning *unless there are special circumstances that justify doing otherwise. The purpose is to deter individuals*, to whom this exemption applies, from importing or trafficking in drugs. Anecdotal evidence suggests that caning is regarded by would-be offenders as one of the most dreaded forms of punishments. The mandatory number of strokes for the present offence is 15, which is significantly high considering that the maximum number of strokes that can be inflicted on an offender at any one time is 24. Given the severity of the mandatory punishment of 15 strokes of the cane which this offence attracts, the maximum of 12 months' imprisonment should be added if the accused person is exempted from caning. In this case, no special circumstances exist to justify otherwise. This approach must be taken so that such exempted accused persons have

> less incentive to be involved in the movement of drugs. [emphasis added]

24 A similar approach was taken in *Nyugen* at [36]:

> In my opinion, the court should consider imposing an additional imprisonment term in respect of offenders who are exempted from caning *unless there are special circumstances that justify doing otherwise*. As I have stated in *PP v Kisshahllini a/p Parameswaran* [2016] 3 SLR 261, which also concerned the unauthorised importation of a controlled drug by a female and which was heard one day before the present case, *the purpose is to deter individuals to whom this exemption applies from being involved in the drugs trade*. The most dreaded form of punishment is probably caning. For the present offence, caning is not discretionary and it is set at 15 strokes, which is significantly high considering that the maximum number of strokes that can be inflicted on an offender at any one time is 24. Given the severity of the mandatory punishment of 15 strokes of the cane for non-exempted offenders, the maximum of 12 months' imprisonment should be added if an offender is exempted from caning, even if an additional 12 months might not appear to make a big difference when viewed against the minimum sentence of 20 years' imprisonment. In this case, I see no special circumstances to justify otherwise. This is to ensure that such exempted persons have less incentive to be involved in the drugs trade. [emphasis added]

25 A number of points of interest arise from these passages. First, they suggest that where the offender is exempted from caning, the sentence of imprisonment should be enhanced "unless there are special circumstances that justify doing otherwise". Second, this was thought to be justified by the principle of deterrence. Third, Tay J meted out the maximum enhancement of 12 months' imprisonment, even though the accused persons had been exempted from 15 strokes of the cane (rather than the maximum of 24).

26 The principle enunciated in these decisions, that "the court should consider imposing an additional imprisonment term in respect of offenders who are exempted from caning unless there are special circumstances that justify doing otherwise", has been adopted in subsequent cases. In *Public Prosecutor*

v Razak bin Bashir [2017] SGHC 33 ("*Razak*"), the accused faced a minimum sentence of 20 years' imprisonment and 15 strokes of the cane. The accused in *Razak* was a 52-year-old male drug trafficker who was exempted due to his age. In considering the additional sentence to be imposed due to the accused's exemption from caning, Woo Bih Li J referred to *Kisshahllini* and said as follows (at [23]–[24]):

> 23 As a matter of general principle, I agreed that an additional sentence of imprisonment should be imposed in lieu of caning to deter individuals who are covered by s 325(2) CPC from trafficking unless there are special circumstances to justify otherwise. Furthermore, the additional sentence of imprisonment is a substitute for the additional punishment of caning which would otherwise have been imposed.
>
> 24 However, as the prescribed punishment for the first charge was 15 strokes of the cane and this was not the maximum which an offender could have been facing, I was of the view that I should calibrate the additional sentence of imprisonment. Accordingly, I imposed an additional nine months' imprisonment in lieu of caning.

27 In short, Woo J agreed with the approach taken by Tay J in *Kisshahllini* and *Nguyen*, save that he disagreed on the extent of the enhancement.

28 Woo J also referred (at [22]) to a decision of Hoo Sheau Peng JC in *Public Prosecutor v Low Johnnie* Criminal Case No 32 of 2016 (18 July 2016), for which no written grounds were rendered. There, Hoo JC sentenced a 75-year-old drug trafficker to 21 years' imprisonment, including an enhancement of six months that was imposed in lieu of 15 strokes of the cane. On the basis of *Kisshahllini*, Hoo JC accepted that there was a "principle that imprisonment in lieu of caning should be imposed", but in view of the accused's age and health, she imposed a shorter term of additional imprisonment.

29 We turn to examine the genesis of the other relevant provisions and the relevant case law.

Section 328(2) of the CPC

30 Section 328 of the CPC provides:

> **Limit on number of strokes**
>
> 328.—(1) Notwithstanding any provision of this Code or any other law to the contrary, where an accused is sentenced at the same sitting for 2 or more offences punishable by caning (referred to in this section as the relevant offences), the aggregate sentence of caning imposed by the court in respect of the relevant offences shall not exceed the specified limit.
>
> (2) Subject to any other written law, where an accused would but for subsection (1) have been sentenced to an aggregate sentence of caning which exceeds the specified limit, the court may impose a term of imprisonment of not more than 12 months in lieu of all such strokes which exceed the specified limit.
>
> (3) A court may impose a term of imprisonment under subsection (2) notwithstanding that the aggregate of such term and the imprisonment term imposed for any of the relevant offences exceeds the maximum term of imprisonment prescribed for any of the relevant offences.

31 Section 328(2) of the CPC is similarly a relatively new provision that was introduced in 2011, along with s 325(2) of the CPC.

32 There is a dearth of case law dealing with s 328(2) of the CPC. It should first be noted that the exemption under s 328(1) read with s 328(6) is of caning in excess of the specified limit of 24 strokes (in the case of an adult) or 10 strokes of the cane (in the case of a juvenile). Such an offender will be caned (assuming no other ground for exemption applies), but only up to the limit. It is perhaps unsurprising in the circumstances that in both the High Court cases that have considered the provision, the judges decided not to enhance the sentence of imprisonment on account of the additional strokes of the cane that the offenders were exempted from. The first case, *Public Prosecutor v BMD* [2013] SGHC 235 ("*BMD*"), concerned an accused person, aged 40, who was

convicted of six charges of various sexual offences. He was sentenced to a global sentence of 22 years' imprisonment and 24 strokes of the cane. But for the 24-stroke limit specified in s 328(6) of the CPC, he would have been sentenced to 42 strokes of the cane. Nevertheless, Tay J "did not think it necessary" to invoke s 328(2) of the CPC and impose an imprisonment term in lieu of caning "[i]n view of the totality of the sentence", which he considered to be "adequate punishment" (at [72]).

33 The next case was *Public Prosecutor v BNN* [2014] SGHC 7. The accused, aged 37, pleaded guilty to seven charges of sexual offences and causing hurt. The accused was sentenced to 32 years' imprisonment and 24 strokes of the cane. But for the 24-stroke specified limit, he would have received 55 strokes of the cane. Nevertheless, Tan Siong Thye JC (as he then was) decided not to impose an additional imprisonment term on the accused under s 328(2) of the CPC. Tan JC found that the accused person's sentence of 32 years' imprisonment with the specified limit of 24 strokes was "sufficient for [his] vile criminal conduct" ([95]–[97]).

Section 332(2) of the CPC

34 Finally, we turn to s 332(2) of the CPC — the provision directly implicated in this case — and the relevant case law. Section 332 of the CPC provides:

> **Procedure if punishment cannot be inflicted under section 331**
>
> 332.—(1) Where a sentence of caning is wholly or partially prevented from being carried out under section 331, the offender must be kept in custody until the court that passed the sentence can revise it.
>
> (2) That court may —
>
> (*a*) remit the sentence; or

> (*b*) sentence the offender instead of caning, or instead of as much of the sentence of caning as was not carried out, to imprisonment of not more than 12 months, which may be in addition to any other punishment to which he has been sentenced for the offence or offences in respect of which the court has imposed caning (referred to in this section as the relevant offences).
>
> (3) A court may impose a term of imprisonment under subsection (2)(*b*) notwithstanding that the aggregate of such term and the imprisonment term imposed for any of the relevant offences exceeds the maximum term of imprisonment prescribed for any of those offences.
>
> …

35 Section 331 of the CPC, which is referred to in s 332, states that caning cannot be carried out if a medical officer certifies an offender to be unfit for caning.

36 The predecessor of s 332(2)(*b*) of the CPC was introduced into Singapore law through the Criminal Law (Amendment) Ordinance 1917 (SS Ord No 10 of 1917), based on the provision's equivalent in the Indian Criminal Procedure Code 1898 (Act V of 1898). A change was made when s 332 of the CPC was adapted from its immediate predecessor, s 233 of the 1985 CPC, when the present CPC came into force on 2 January 2011 (see [10] above). The change was to allow an additional term of imprisonment to be imposed in lieu of caning even if this brought the overall sentence *above the original statutory maximum*: see s 332(3)–(4) of the CPC, *cf* s 233(2) of the 1985 CPC.

37 Despite the long history of the provision, there has not been much in the way of relevant case law. There appear to be only two unreported decisions of the High Court.

38 The first is *Public Prosecutor v Ow Siew Hoe* Criminal Case No 36 of 2015 (4 August 2016) ("*Ow Siew Hoe*"), where Chan Seng Onn J decided not

to impose any term of imprisonment in lieu of the minimum 12 strokes of the cane for a rapist, because he considered that the original sentence of 12 years' imprisonment was sufficient.

39 The second is *Public Prosecutor v Riduan Bin Rantau* Criminal Case No 38 of 2015 (27 June 2016) ("*Riduan*"), where the accused pleaded guilty to one charge of rape, one charge of robbery and one charge of theft. For the rape and robbery offences, he was sentenced to nine years' imprisonment and six strokes of the cane, and three years' imprisonment and 12 strokes of the cane, respectively. The two sentences were ordered to run consecutively, for an aggregate sentence of 12 years' imprisonment and 18 strokes of the cane.

40 Subsequently, the accused was found unfit for caning. The prosecution, citing *Nguyen*, sought the maximum 12 months' imprisonment in lieu of caning. The accused argued that there should be no enhancement in respect of the 12 strokes of the cane ordered for the robbery charge given the low level of violence inflicted and low value of items taken. As for the six strokes of the cane for the rape offence, the accused submitted that an enhancement of three months' imprisonment would be appropriate. Choo J ordered an enhancement of 12 months' imprisonment.

41 In view of the absence of detailed grounds for these two decisions, it is difficult to draw meaningful comparisons or conclusions, save to say that having regard only to the outcomes in *Riduan* and *Ow Siew Hoe*, given that both cases concerned rape and involved broadly similar initial sentences, the enhancement of the offender's sentence in one but not the other seems somewhat at odds.

42 We turn to decisions of the State Courts. There have been at least three decisions with written grounds. They are *Public Prosecutor v Yeo Meng Teck*

Nelson [2008] SGDC 369 ("*Nelson Yeo*"), *Public Prosecutor v Abdullah Bin Abdul Rahman* [2011] SGDC 380 ("*Abdullah*") and *Public Prosecutor v Song Hui* [2012] SGDC 125 ("*Song Hui*"). We discuss each case in turn.

43 In *Nelson Yeo*, the accused was sentenced to a total sentence of seven years and six months' imprisonment and five strokes of the cane for drug trafficking and other drug-related offences. He was subsequently found to be unfit for caning and his sentence of imprisonment was enhanced by six months. In arriving at this decision, the district judge considered "the reason why the accused was not fit for caning and whether it was appropriate for the court to exercise judicial mercy and remit the sentence of caning" (at [7]). It appeared to us that although it was not framed precisely in this way, the district judge proceeded on the basis that the accused person's sentence should be enhanced in lieu of caning, unless there was a reason to do otherwise. The accused's appeal to the High Court against sentence was dismissed.

44 *Abdullah* and *Song Hui*, on the other hand, concerned offences under the Moneylender's Act (Cap 188, 2010 Rev Ed) ("the MLA"). The accused persons had committed acts likely to cause annoyance to house occupants in connection with unlicensed loans, for example, by splashing paint on the door of the occupant's unit and defacing nearby walls with an indelible marker. Under ss 28(2)(*a*) and 28(3)(*b*)(i) of the MLA, each charge was punishable with a fine of between $5000 to $50,000, an imprisonment term of up to five years and between three to six strokes of the cane.

45 The accused person in *Abdullah*, who pleaded guilty to three such charges and another less serious charge under the MLA, was sentenced to a total sentence of 16 weeks' imprisonment and nine strokes of the cane. He was subsequently sentenced to a further term of nine weeks' imprisonment in lieu of

the nine strokes of the cane (one week's imprisonment per stroke that was avoided). Upon the prosecution's appeal, the High Court in *Public Prosecutor v Abdullah Bin Abdul Rahman* Magistrate's Appeal No 255 of 2011 (3 October 2012) increased the accused's term of imprisonment to a total sentence of 14 months' imprisonment, but the district judge's order on enhancing the accused's sentence of imprisonment in lieu of caning was not disturbed.

46 Lastly, the accused person in *Song Hui* faced four charges under s 28(1)(*b*), punishable under ss 28(2)(*a*) and s 28(3)(*b*)(i) of the MLA. He was originally sentenced to a total of 24 months' imprisonment and 12 strokes of the cane. Subsequently, he was sentenced to a further term of six months' imprisonment in lieu of 12 strokes of the cane (two weeks' imprisonment per stroke that was avoided). The accused's appeal to the High Court against sentence was dismissed.

47 In both *Abdullah* and *Song Hui*, there was no explanation of the matters that the judges took into account in deciding to enhance the sentences. However, on the duration question, the district judge in *Song Hui* explained (at [17]) that "for ease of application", a pro-rated approach was used, in that the maximum additional term of imprisonment of 12 months was divided by the maximum number of strokes of the cane for adults (24 strokes) to arrive at a tariff of half a month's imprisonment per stroke exempted.

Observations on the current state of the law

48 It will be apparent from the foregoing discussion that the sentencing practice in relation to the enhancement of sentences in lieu of caning has not been consistent in relation to either the enhancement question or the duration question.

49 In relation to the enhancement question, courts have accorded different weight to factors such as the offender's age and the length of the original sentence. Even more fundamentally, courts have differed on the appropriate starting point. Broadly speaking, there appear to be two approaches, namely:

(a) That an additional sentence should be imposed, unless there are "special circumstances" to justify not doing so (see for instance, *Kisshahllini, Nguyen* and *Razak*) ; or

(b) That an additional sentence will only be imposed if there are grounds to warrant imposing it (see for instance, *Subran, BMD* and *Ow Siew Hoe*).

50 Similarly, different approaches have been taken to the duration question. Two distinct approaches from the case law were helpfully distilled by the Prosecution in its submissions, and we will adopt the same terminology. The first was called the "pro-rated approach", where typically two weeks' imprisonment may be imposed in lieu of each stroke of the cane foregone. The second approach, labelled the "severity approach", sees a longer term of imprisonment than the pro-rated approach to reflect the deterrent effect that may be lost from the exemption of caning.

51 There were further differences in the application of the severity approach. Tay J in *Kisshahllini* and *Nguyen* imposed the maximum 12 months' imprisonment in lieu of 15 strokes of the cane, while Woo J in *Razak* imposed nine months' imprisonment in lieu of the same number of strokes of the cane. Woo J noted (at [24]) that 15 strokes of the cane was not the maximum, and thus considered it appropriate to "calibrate the additional sentence of imprisonment".

52 Given the diversity of views and approaches to these issues, we considered it appropriate to settle these points.

The enhancement question

The appropriate starting point

53 In our judgment, the correct starting point is that an offender's term of imprisonment should not be enhanced, unless there are grounds to justify doing so. Through ss 325(1), 328(1) and 331 of the CPC, Parliament has legislated to treat certain categories of offenders differently from others. Thus, women, men over the age of 50, those already sentenced to the maximum number of strokes of the cane at a single sitting of the court and those deemed medically unfit for caning are categories of offenders who are exempted from part or all of the caning to which they would or might otherwise have been sentenced. This reflects a legislative choice. There has been no suggestion in the present case that such a choice was irrational or otherwise legally suspect or indefensible. In any event, this point was considered and disposed of by the Court of Appeal in *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [102]–[116]. The question for us, therefore, was whether the court should proceed on the presumptive basis that once an offender is exempted from caning, his sentence of imprisonment should be enhanced. We did not think so.

54 We first note that the relevant provisions are all worded as open-ended discretion-conferring provisions. On a plain reading of the provisions, the courts have been given the discretion to enhance the sentences for the exempted offenders. What this means is that the courts have the power to impose additional imprisonment for such offenders. There is no mandatory requirement that this power be exercised, even where the caning would have been a mandatory part of the sentence, but for the exemption. Perhaps the clearest

example of this is s 332(2)(*a*) of the CPC (see at [34] above), which is explicit that the court may remit the sentence. But even aside from this, the relevant provisions are all worded in terms that confer a discretion rather than impose an obligation. In such circumstances, the starting point in our judgment is that the discretion to enhance the term of imprisonment should only be exercised if there are grounds to justify doing so. Hence, as a general matter, the sentence should not be enhanced until and unless the sentencing judge has considered the matter and concluded that there are grounds to warrant it.

55 The Prosecution, relying on *Nguyen* (see above at [24]), submitted that the courts should impose additional imprisonment in lieu of caning "as the default position unless exceptional circumstances warrant a departure from such norms".

56 With respect, we did not accept this submission because it is not consistent with the way in which the relevant sections are worded. The sections are not framed in terms that suggest that the imprisonment sentence *shall* be enhanced in such circumstances, even though Parliament could easily have done so. One example where Parliament had done just that, as pointed out by Mr Koh, was in s 67 of the Road Traffic Act (Cap 276, 2004 Rev Ed), which provides that a person convicted of driving while under the influence of drink or drugs shall, "unless the court for special reasons thinks fit to order otherwise", be disqualified from holding or obtaining a driving licence for a period of not less than 12 months.

57 In fact, Parliament uses similar language in the CPC itself. Section 304(1)–(2) of the CPC provide as follows:

> **Corrective training and preventive detention**

304.—(1) Where a person of the age of 18 years or above —

> (a) is convicted before 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 reached the age of 16 years for offences punishable with such a sentence; or
>
> (b) is convicted at one trial before 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 reached the age of 16 years 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 his reformation and the prevention of crime that he should receive training of a corrective character for a substantial period of time, followed by a period of supervision if released before the expiration of his sentence, the court, *unless it has special reasons for not doing so*, shall sentence him to corrective training for a period of 5 to 14 years in lieu of any sentence of imprisonment.

(2) Where a person of the age of 30 years or above —

> (a) is convicted before 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 3 times since he reached the age of 16 years of offences punishable with such a sentence, and was on at least 2 of those occasions sentenced to imprisonment or corrective training; or
>
> (b) is convicted at one trial before 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 reached the age of 16 years for an offence punishable with imprisonment for 2 years or more,

then, if the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial period of time, followed by a period of supervision if released before the expiration of his sentence, the court, *unless it has special reasons for not doing so*, shall sentence him to preventive detention for a period of 7 to 20 years in lieu of any sentence of imprisonment…

[emphasis added]

58 In our judgment, the choice of legislative language in the context of the case at hand strongly pointed to the conclusion that an offender's term of imprisonment should not be enhanced unless there are grounds to do so. Furthermore, it is also material that the relevant provisions in the present case each apply in contexts that are slightly different and with consequences that are similarly distinct. Section 325(1) of the CPC provides for an absolute prohibition for certain classes of offenders; s 328(1) exempts the offender from caning beyond the specified limit, but ordinarily the offender will suffer the maximum permitted number of strokes; and s 332 applies where an offender is found to be medically unfit to suffer some or all of the strokes to which he has been sentenced. These differences militate against the conclusion that the correct approach is to begin with a common default position that the sentence of imprisonment should be enhanced in the absence of some special circumstances. This also coheres better with the fact that the courts should not, in general, exercise punitive powers absent sufficient justification. As we noted above, all these considerations will require the court in each case to consider the circumstances that are before it and then decide whether enhancement is called for. We turn to identify a non-exhaustive list of factors to be considered in this context.

Relevant factors to be considered

59 We considered that the following factors may warrant an enhancement of the sentence of an exempted offender:

(a) The need to compensate for the deterrent effect of caning that is lost by reason of the exemption. We note in passing that this was the

principal consideration that underlay the reasoning of the court in *Kisshahllini* and in *Nguyen* (see [23] and [24] above);

(b) The need to compensate for the retributive effect of caning that is lost by reason of the exemption; and

(c) The need to maintain parity among co-offenders.

60 However, even if these factors are present, as they often will be, that does not necessarily mean that enhancement of the exempted offender's sentence will be warranted. The court should instead consider the matter holistically and assess whether there are any factors which could militate against the imposition of an additional term of imprisonment. A non-exhaustive list of such factors would include:

(a) Medical grounds;

(b) Old age;

(c) Compassionate grounds;

(d) The need for proportionality; and

(e) Parliamentary intention in enacting a sentencing regime for a given offence.

61 We elaborate on these factors.

Factors that may warrant an enhancement of sentence

62 A sentence of caning may be imposed to meet the sentencing objectives of deterrence and/or retribution (see *Chia Kim Heng Frederick v Public*

Prosecutor [1992] 1 SLR 361 at [17]; and *Public Prosecutor v Mohammad Rohaizad bin Rosni* [1998] 3 SLR 804 at [37]). When an offender is exempted from caning, the court will generally find it helpful to first identify the principal sentencing objective(s) that underlie(s) the imposition of caning for the offence in question.

63 For example, in cases where there is a specific victim, retribution is likely to be the principal sentencing consideration, especially where violence has been visited upon the victim: see *Sentencing Principles in Singapore* at paras 06.021 and 30.023. On the other hand, deterrence is likely to be the dominant sentencing consideration behind the imposition of caning for offences that impact public order and social safety, such as serious drug and moneylending offences: see *Sentencing Principles in Singapore* at para 30.033. In some instances, both sentencing principles may simultaneously be substantially engaged, for instance where serious injury has been caused to the victim of a moneylending offence.

64 Having identified the dominant sentencing objective(s), the court should consider whether the objective(s) in question would be furthered by the imposition of an additional term of imprisonment in lieu of caning.

(1) THE NEED TO MAINTAIN DETERRENCE

65 Where the need for deterrence has been identified as the dominant sentencing principle behind the imposition of caning, there are at least two factors that should be taken into account in determining whether an enhanced term of imprisonment will further the objective of deterrence.

66 First, the court should consider whether an additional term of imprisonment is *needed* to replace the lost deterrent effect of caning, having

regard to *why* the offender was exempted from caning. We are here addressing, in particular, the sentencing objective of general deterrence which looks to deter other like-minded individuals, who are similarly situated as the offender before the court, from engaging in similar conduct. The key question is whether such potential offenders would have known before committing the offence that by reason of their own circumstances, they would be exempted from caning. If so, then an additional term of imprisonment in lieu of caning may be more readily seen as necessary or appropriate in order to compensate for the general deterrent effect lost because the offender knows he or she will be exempted from caning. If, on the other hand, the exemption was unexpected in the circumstances, then there would not be a similar need to replace the lost deterrent effect of caning because the *prospect* of caning would nonetheless have been contemplated by such would-be offenders, even if it might subsequently transpire that they will not be caned.

67 In general, an offender who was exempted from caning due to gender or age is likely to have known from the outset that he or she would not be caned. Therefore, for this class of exempted offenders, an additional term of imprisonment will be more readily seen to be called for, in order to compensate for the lost deterrent effect of caning. Conversely, an offender who was exempted from caning on medical grounds is less likely to have known that he would not be caned. Therefore, it would generally not be necessary to enhance the sentences of such offenders. So too might be the position with offenders who will receive the permitted limit of strokes but are exempted only from further strokes beyond this limit. Of course, these are mere guidelines, and each case must be decided on its own facts.

68 Second, the court should consider whether an additional term of imprisonment would be *effective* in replacing the deterrent effect of caning. In

the context of whether a deterrent sentence should be imposed, the High Court in *Public Prosecutor v Lee Meng Soon* [2007] 4 SLR(R) 240 observed as follows (at [41]):

> As a counterpoint to the intuitively appealing assumption of the hydraulic proportional relationship between sentences and criminal behaviour, some have suggested that it is beliefs about the probability of detection rather than the quantum of punishment which are more likely to influence human behaviour (Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) at para 3.3.2). On this note, it should be highlighted that *it is desirable in the interest of fairness to offenders sought to be made an example of, that "deterrent sentences" are buttressed by reasonable grounds for the supposition that the example will have the result intended*: Eric Stockdale and Keith Devlin, *Sentencing* (Waterlow, 1987) at para 1.70. [emphasis added]

69 Similarly, when considering whether to enhance an offender's sentence to replace the lost deterrent effect of caning, the court should consider whether there are reasonable grounds for thinking that the enhancement would have the effect intended. A key factor in this context is the length of imprisonment that the offence already carries. For example, if an offence carries a long minimum term of imprisonment, it is less likely to be the case that an enhancement of the sentence (such enhancement being limited to an additional 12 months' imprisonment) in lieu of caning would likely provide an effective or meaningful deterrent to would-be offenders having regard to the sentence already prescribed for the offence. The marginal deterrent value of additional imprisonment would generally diminish in relation to the length of the original contemplated term of imprisonment.

(2) THE NEED TO ACHIEVE DUE RETRIBUTION

70 Where retribution is the dominant sentencing objective behind the imposition of caning, then the need to compensate for the retributive effect of caning lost by reason of the exemption would be a factor militating in favour of

enhancing the offender's sentence. As a general observation, and in line with what we have said at [69] above, the weight of this factor should be considered with reference to the length of the existing sentence.

(3) AN ILLUSTRATIVE EXAMPLE OF ENHANCEMENT TO GIVE EFFECT TO SENTENCING OBJECTIVE(S)

71 We digress to refer to a recent case that illustrates when a court might enhance an offender's sentence to give effect to the sentencing objective(s) of deterrence and/or retribution. *Public Prosecutor v Tan Kok Leong and another appeal* [2017] SGHC 188 ("*Tan Kok Leong*") is a decision of See Kee Oon J that was delivered after the present case was decided. It concerned an aesthetic doctor who committed sexual offences against his patient, who was also the accused's business partner and a fellow doctor. The accused was charged with three counts of outrage of modesty under s 354(1) of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") and two counts of causing hurt by means of administering stupefying drugs with intent to commit outrage of modesty, an offence under s 328 of the PC. The district judge acquitted the accused of one charge under s 354(1) of the PC ("the first charge") and convicted him of the remaining four charges. The accused was sentenced to 12 months' imprisonment for each charge under s 354(1) of the PC, and 30 months' imprisonment for each charge under s 328 of the PC, with two of the sentences (one from each type of offence) to run consecutively for an aggregate sentence of 42 months' imprisonment. The accused appealed against his conviction and sentence on the four charges, while the prosecution cross-appealed against his acquittal on the first charge, and sought higher sentences for the remaining four charges.

72 On appeal, See J convicted the accused of the first charge, and upheld his conviction on the four remaining charges. The accused's sentences for each

s 354(1) charge was increased to 14 months' imprisonment, while his sentences for each s 328 charge was increased to 40 months' imprisonment, for an aggregate sentence of 54 month's imprisonment with the same two imprisonment terms running consecutively.

73 What is particularly relevant for the present purposes is See J's reasoning in respect of the s 354(1) charges. See J noted (at [89]) that the benchmark sentence for offences under s 354 of the PC involving intrusion of the victim's private parts or sexual organs is nine months' imprisonment and *three strokes of the cane*. The accused, whose offences fell within this category, could not be caned as he was above the age of 50. See J therefore had to consider whether the accused's sentences should be enhanced under s 325(2) of the CPC. He began by identifying both deterrence and retribution to be relevant objectives in sentencing s 354(1) offences involving medical professionals (at [90]). See J then enhanced the accused's sentence for the s 354(1) charges by two months per charge in the light of "[t]he need for a sufficiently deterrent and retributive sentence" given the "substantial aggravating factors" in this case (at [91]). *Tan Kok Leong* is thus an illustrative case of when an offender's sentence may be enhanced to give effect to the dominant sentencing objective(s).

(4) PARITY BETWEEN CO-OFFENDERS

74 As noted above (at [10]), one of the stated legislative reasons for enacting ss 325(2) and 328(2) of the CPC was to give the courts the discretion to achieve parity between co-accused persons. The courts have long endorsed the principle of parity, which urges that sentences meted out to co-offenders who are party to a common criminal enterprise should not generally be unduly disparate from each other in the absence of relevant differentiating factors: see for example *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 ("*Chong*

Han Rui") at [1]; *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 at [7]. Thus, the need to achieve parity between co-offenders will likely be a relevant factor when the court considers enhancing the prison sentence of an exempted offender who committed an offence alongside a co-offender who is liable for caning. In such a scenario, if the court declines to enhance the sentence of the exempted offender, this should be sufficiently explained.

75 It may be noted that the principle of parity, which applies as between co-offenders who are parties to a common criminal enterprise, is distinct from the general principle of consistency in sentencing. As was explained in *Chong Han Rui* at [47], the parity principle rests on the need to preserve and protect public confidence in the administration of justice, and "where co-offenders in a common criminal enterprise are sentenced in an unduly disparate manner, the sentences would then seem to be arbitrarily imposed and this raises fundamental rule of law concerns". The same considerations do not apply in precisely the same way outside the context of co-offenders in a common criminal enterprise. However, in considering whether to enhance the prison sentence of offenders, it would be desirable for sentencing courts to consider the need for general consistency and to achieve this by applying the sentencing guidelines laid down in these written grounds.

Factors that militate against an enhancement of sentence

76 We turn to the factors that might militate against the enhancement of the sentence.

(1) MEDICAL GROUNDS

77 The court should be mindful of medical grounds as a possible reason for not enhancing the offender's sentence. In *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78 ("*Chew Soo Chun*") the court identified (at [38]) two ways in which ill health might be relevant to sentencing. First, ill health could be relevant as a ground for the exercise of judicial mercy in truly exceptional cases. Second, it could be relevant as a mitigating factor where an imprisonment term will have a markedly disproportionate impact on an offender by reason of his ill health. These same considerations should also inform the court's decision in deciding whether to enhance the sentence of an exempted offender.

78 For the avoidance of doubt, the fact that an offender has a medical condition that caused him to be exempted from caning under s 331 of the CPC is not in and of itself a factor against the enhancement of his sentence, *unless* the considerations outlined in *Chew Soo Chun* are engaged.

(2) OLD AGE

79 The High Court in *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [94] provided the following guidance on sentencing offenders who are of old age:

> The critical point is to assess whether, by reason of his age, the [offender] would suffer disproportionately from such a term of imprisonment unless some moderation was made.

80 A similar consideration would apply in considering whether to enhance the prison sentence of an elderly offender, especially where he is already subject to a lengthy prison term.

(3) COMPASSIONATE GROUNDS

81 The court should also consider whether there are any compassionate grounds not to enhance the offender's sentence. For example, if an offender was certified medically unfit for caning during the execution of his sentence of caning (after some strokes had been inflicted), the court might be more inclined not to enhance the imprisonment sentence. This might be done in recognition not only of the fact that the offender had been caned (albeit for a lesser number of strokes), but also the fact that he had lived in fear and apprehension of being caned for the original number of strokes that had been imposed.

(4) PROPORTIONALITY

82 The requirement of proportionality — a principle that "runs through the gamut of sentencing decisions" (*Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [47]) — is also relevant in the present context. The court should have regard to whether an enhancement of the offender's sentence will cause the aggregate sentence to be disproportionate to the totality of the offender's criminal behaviour. If the court is of the view that enhancement would cause the aggregate sentence to be disproportionate, it may either opt not to enhance the sentence at all, or to enhance the sentence to a lesser extent.

(5) PARLIAMENTARY INTENTION

83 Lastly, the court should also have regard to Parliament's intention in enacting a particular sentencing regime, and consider whether imposing an additional term of imprisonment would be consistent with and would advance that intention.

84 This factor in the analysis ultimately depends on the circumstances of each sentencing regime, and may potentially urge or militate against an

enhancement of sentence. However, it is particularly relevant for immigration offences, where Parliament has made clear its intention to reduce the term of imprisonment for such offenders in order to manage Singapore's prison capacity. For example, ss 6 and 15 of the Immigration Act (Cap 133, 2008 Rev Ed), which criminalise illegal entry to Singapore and overstaying in Singapore without a permit respectively, include certain offences that carry a minimum sentence of three strokes of the cane: see ss 6(3)(*a*) and 15(3)(*b*) of the Immigration Act. In 1995, Parliament capped the imprisonment term for both offences at six months. The rationale for this amendment was explained by then Minister for Home Affairs Mr Wong Kan Seng (*Singapore Parliamentary Debates, Official Report* (1 November 1995) vol 65 at col 78) as follows:

> Clauses 3 and 5 of the Immigration (Amendment) Bill seek to amend section 6(3)(*a*) and section 15(3)(*b*) to remove the mandatory minimum three months' jail term and to cap the maximum imprisonment term for illegal entry and overstaying at six months. There are two reasons for this. *First, we do not want these foreigners to clog up our jails.* As at 30th September this year, our prison capacity was exceeded by more than 36%. Immigration offenders constituted more than half, i.e., 67.4% to be exact, of the 2,787 foreign prisoners. *Secondly, by freeing up the jails, we will be able to prosecute more immigration offenders who may otherwise have to be let off the hook due to the prisons' limited capacity.* The mandatory caning provision will remain unchanged as caning has proved to be very effective; hardly any immigration offender who has been caned returns to Singapore. For persons who are not liable to be caned under our laws, that is, women and men above 50 years old, we have provided for them to be fined up to $6,000 instead. [emphasis added]

85 The provisions referred to in the Minister's speech that address the position of persons who are not liable to be caned under our laws are ss 6(3)(*a*) and 15(3)(*b*) of the Immigration Act. These provisions make it clear that where an offender is exempted from caning by virtue of s 325(1) of the CPC, the offender should, in lieu of caning, be punished with a fine. Consistent with this,

s 325(2) of the CPC, which ordinarily empowers the court to enhance the sentence of imprisonment, is "[s]ubject to any other written law".

86 As to other categories of exempted offenders who commit offences under ss 6(3)(*a*) and 15(3)(*b*) of the Immigration Act, while the court retains the power to enhance the offender's sentence, it should be slow to do so, taking due account of Parliament's intention to reduce the terms of imprisonment for such offences.

Conclusion on the enhancement question

87 In summary, in deciding whether to enhance an exempted offender's sentence in lieu of caning, the appropriate starting point is that no enhancement should be ordered unless there are grounds to do so. Possible grounds for such enhancement include the need to compensate for the deterrent and/or retributive effect of caning that is lost by reason of the exemption, and the need to maintain parity among the sentences of co-offenders. The court should also consider whether there are factors present which militate against enhancing an offender's sentence, including medical grounds, old age, compassionate grounds, the importance of proportionality and the need to achieve consistency with Parliament's intentions.

88 Where there are factors pulling in both directions, the court should judiciously exercise its discretion to strike the appropriate balance among the competing considerations, based on the facts of the particular case. Such a balance may also be struck by enhancing the offender's sentence, but reducing the extent of the enhancement in light of the factors that militate against enhancement (see [91] below). We have not set out the relative weight of each factor. This would be neither possible nor ideal. The appropriate weight to be

accorded to each factor is ultimately a fact-dependent exercise, and is best left to be developed through case law over time.

The duration question

89 We turn to the second broad issue which pertains to how the extent of the enhancement should be determined. In our judgment, if the court decides to enhance an offender's sentence, the extent of such enhancement should bear some correlation to the number of strokes of the cane that the offender has been exempted from. However, we would not go so far as to adopt a pro-rated approach. Rather, we consider that indicative ranges of sentences would better allow sentencing judges to calibrate the extent of the enhancement to fit the circumstances of each case.

90 We thus provide the following indicative guidelines:

(a) 1 to 6 strokes avoided: up to 3 months' imprisonment.

(b) 7 to 12 strokes avoided: 3 to 6 months' imprisonment.

(c) 13 to 18 strokes avoided: 6 to 9 months' imprisonment.

(d) More than 19 strokes avoided: 9 to 12 months' imprisonment.

91 Beyond this, in calibrating the precise extent of the enhancement, the court should have regard to the factors we have already discussed at [59]–[86] above. The court should identify the grounds which prompted it to enhance the offender's sentence in the first place, and consider what length of imprisonment would be appropriate to address those concerns. Additionally, the court should also consider whether any factor which weighed against the enhancement of the offender's sentence might justify a shorter period of additional imprisonment.

The law applied to the present appeal

92 In the light of these principles, we turn to the present appeal. As set out above at [3], the Appellant was convicted of one charge of trafficking 13.23g of diamorphine and one charge of possession of 0.27g of diamorphine. For the trafficking charge, he was sentenced to the mandatory minimum of 20 years' imprisonment and 15 strokes of the cane. For the possession charge, he was sentenced to three years' imprisonment. Both sentences were ordered to run concurrently, for a global sentence of 20 years' imprisonment and 15 strokes of the cane. The Appellant was later certified by a medical officer to be permanently unfit for caning and the Prosecution applied for the Appellant's sentence to be enhanced under s 332(2)(*b*) of the CPC.

93 Before the learned District Judge, the Prosecution suggested that two weeks' imprisonment be imposed for each of the 15 strokes of the cane, for a total of 30 weeks' additional imprisonment. The Appellant, on the other hand, asked that no additional imprisonment term be imposed as his original imprisonment term of 20 years was already very severe.

94 The decision of the learned District Judge is reported as *Public Prosecutor v Amin Bin Abdullah* [2016] SGDC 352 ("the GD"). In summary, the District Judge applied the principle in *Nguyen* that the court should consider imposing an additional term of imprisonment on offenders who are exempted from caning unless there are special circumstances that justify not doing so. Finding no special circumstances in the Appellant's case, the District Judge decided to enhance the Appellant's sentence. The duration of such enhancement was arrived at using the pro-rated approach. Thus, the District Judge sentenced the Appellant to 30 weeks' additional imprisonment in lieu of 15 strokes of the cane.

95 As evident from the foregoing discussion, we did not approach the Appellant's case in the same way. Our starting point was that the Appellant's sentence should not be enhanced unless there were grounds for it. We found no such grounds on the facts of this case. While we agreed with the general proposition that there was a need to deter drug offenders, we failed to see how deterrence was relevant to the Appellant. The Appellant's exemption from caning was on medical grounds. For the reasons stated at [66]–[67] above, we considered that there was no real need to enhance the sentence in the interests of deterrence. Additionally, given the long minimum sentence that was applicable, there was likely to be less of a deterrent effect from any enhancement (see [68]–[69] above).

96 Nevertheless, we dismissed the Appellant's appeal because we were satisfied that the Appellant's original sentence of 20 years' imprisonment for trafficking in 13.23g of diamorphine was in fact unduly low for the reasons that follow.

The appropriate sentence for trafficking in 10–15g of diamorphine

97 The range of sentences for trafficking in 10–15g of diamorphine, as stated in the Second Schedule of the MDA, is between a minimum sentence of 20 years' imprisonment and 15 strokes of the cane and a maximum sentence of 30 years' imprisonment or imprisonment for life and 15 strokes of the cane.

98 In *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*"), the Court of Appeal at [29] applied the following sentencing approach in drug cases that had been laid down in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122:

> …the full spectrum of possible sentences should be utilised and the indicative starting points should be broadly proportional to the quantity of drugs trafficked or imported.

99 The Court of Appeal also observed in *Suventher* (at [31]) that "it is possible to use the proposed sentencing range set out above for offences involving other types of drugs where the range of prescribed punishment is the same." In fact, the sentencing range (for cannabis) in *Suventher* was recently applied by the Court of Appeal to a case of importing methamphetamine, where the range of prescribed punishment is the same, that is between 20 and 30 years' imprisonment: see *Pham Duyen Quyen v Public Prosecutor* [2017] SGCA 39 at [55].

100 Applying the sentencing approach that was laid down in *Suventher*, we determined that the following sentencing guidelines were appropriate in this case:

(a) 10 to 11.5g: 20 to 22 years' imprisonment

(b) 11.6 to 13g: 23 to 25 years' imprisonment.

(c) 13 to 14.99g: 26 to 29 years' imprisonment.

101 Thus, in the absence of mitigating factors, the Appellant should have received a sentence of between 23 to 25 years' imprisonment for trafficking in 13.23g of diamorphine. It was not clear from the GD why the Appellant was originally sentenced to the mandatory minimum sentence of 20 years' imprisonment and 15 strokes of the cane; it did not appear that any mitigating factor was applicable that would justify this.

102 In this light, even after the enhancement, the Appellant's overall sentence of 20 years and 30 weeks' imprisonment cannot be said to be

manifestly excessive. In fact, if we had allowed the Appellant's appeal against the additional term of imprisonment imposed, we would also have exercised our powers of revision to increase the length of the Appellant's original term of imprisonment as we found it to be manifestly inadequate: see ss 400(1) and 400(2), read with s 390(1)(*c*) of the CPC. In the final analysis, and in the absence of any appeal by the Prosecution against the primary sentence that was imposed below, we decided simply to dismiss the Appellant's appeal against the enhancement of his sentence.

Conclusion

103 For these reasons, we dismissed the Appellant's appeal.

104 Once again, we thank Mr Koh for his considerable assistance in the research and submissions he placed before us.

Sundaresh Menon	Chao Hick Tin	See Kee Oon
Chief Justice	Judge of Appeal	Judge

Appellant in person;
Terence Chua, Chin Jincheng and Du Xuan (Attorney-General's Chambers) for the respondent;
Koh Zhen-Xi Benjamin (Allen & Gledhill LLP) as young *amicus curiae*.