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

[2023] SGHC 135

Magistrate's Appeal No 9256 of 2022

Between

Ow Gan Wee

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Forms of punishment — Preventive detention]
[Criminal Procedure and Sentencing — Sentencing — Persistent offenders]

Ow Gan Wee
v
Public Prosecutor

[2023] SGHC 135

General Division of the High Court — Magistrate's Appeal No 9256/2022
Vincent Hoong J
11 May 2023

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

1 The appellant, Mr Ow Gan Wee, pleaded guilty to two charges of theft under s 379 of the Penal Code (Cap 224, 2008 Rev Ed) and s 379 of the Penal Code 1871 (2020 Rev Ed), and one charge of drug possession under s 8(*a*) of the Misuse of Drugs Act 1973 (2020 Rev Ed) ("MDA"). The offences were committed between November 2021 and June 2022. He was sentenced to eight years' preventive detention ("PD"). The District Judge's ("DJ") grounds of decision can be found in *Public Prosecutor v Ow Gan Wee* [2023] SGDC 16.

2 The appellant now appeals against his sentence and submits that an alternative sentence of seven to eight years' imprisonment be imposed.

3 The appellant makes the following arguments to show that his sentence is manifestly excessive:

(a) First, his sentence is disproportionate to the seriousness of his crimes. He argues that the value of the items he stole was not high, he did not use criminal force in the commission of his theft offences, he did not have premeditation, and he did not intend to steal the money in order to purchase heroin. In addition, the sentence is disproportionate compared to the sentences imposed in other cases.

(b) Second, the sentence should have taken into account that restitution had been made for the 2nd, 3rd, and 8th Charges as cash was seized by the police and subsequently handed back to the victim on the spot.

(c) Third, he submits that the Prosecution should not be so quick to assume that he would re-offend again.

(d) Fourth, he submits that the DJ failed to place mitigating weight on several factors. These include:

(i) the fact that the offences arose because he was attempting to go to a police station to surrender;

(ii) the fact that he suffers from multiple psychiatric conditions;

(iii) taking into account *all* of his antecedents against him, when only the theft convictions in 1986, 2006, and 2013 should have been considered;

(iv) relying on the statutory maximum sentence, alleging that the Prosecution did not look at the specific facts of his case, in particular, that his crime was not serious;

(v) the fact that the imprisonment term of eight years' PD would be crushing, as he would not be able to build up a nest egg for his family; and,

(vi) the fact that after being sentenced, he renounced his gang ties on 20 September 2022 as part of the Gang Renunciation Programme Ceremony and has "seriously reflect [*sic*] on [his] life, and resolve[s] finally to live a drug and crime free life for [his] remaining years upon [his] release".

4 The relevant test for whether the sentence is manifestly excessive is found in s 304(2) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), and *Sim Yeow Kee v Public Prosecutor* [2016] 5 SLR 936 ("*Sim Yeow Kee*") which I accept should apply to PD as well.

5 I agree with the DJ that under the first stage of *Sim Yeow Kee* at [86], the technical requirements for both Corrective Training ("CT") and PD were met.

6 I next consider whether it was expedient to sentence the appellant to PD with a view to his reformation and the prevention of crime.

(a) First, I consider the likely imprisonment term that would be imposed for the underlying offences. I accept the DJ's finding that the likely sentence for the charge under the MDA would be four years' imprisonment, taking into account his related antecedents. I also find that the likely sentence for the theft charges would be two years' imprisonment. Even though the amount stolen was not very high, this was the appellant's sixth conviction for this type of offence, and the principle of escalation would be relevant.

(b) Next, I consider whether the Mandatory Aftercare Scheme ("MAS") applies if the offender were sentenced to regular imprisonment. I agree with the DJ that the appellant's eligibility for MAS was a neutral factor.

(c) I then consider whether PD would be unduly disproportionate. Here, the duration of PD imposed by the DJ was for the same number of years that the appellant would have been sentenced to under regular imprisonment. It was also at the lower end of the range of seven to 20 years that PD could have been imposed for.

7 At this point, I set out my findings on the appellant's arguments that PD would be an unduly disproportionate sentence.

(a) I agree with the appellant that his offences may not be the most serious compared to other offences. I also agree that his theft convictions concern relatively low value items and cash. However, this must be placed in the context of the repeated nature of the appellant's offending, and the need to protect the public from such crimes. As noted by the Prosecution, the appellant has had multiple convictions for related offences, and his present set of offences involve five separate theft offences. It is clear that the past sentences the appellant has received for such offences have not been sufficient to deter him from offending. In fact, the timing of the appellant's convictions show that he has repeatedly re-offended a mere few months after each occasion of his release from imprisonment.

(b) In my view, there is insufficient evidence for the appellant's psychiatric health to be a mitigating factor in this case. First, the bare assertion of a psychiatric condition cannot be a mitigating factor: *Chew*

Soo Chun v Public Prosecutor and another appeal [2016] 2 SLR 78 at [38]–[40]. Second, there is no evidence or causal link that has been shown between his psychiatric health and the crimes he committed. Third, to the extent that there is evidence of the appellant's psychiatric health in the past, the IMH report from 2013 states that the appellant does not suffer from any mental illness other than Benzodiazepines and Opioid dependence.

(c) I also note that there is no evidence that the appellant had intended to surrender to the police. He was either caught red handed or had to be traced by the police for his offences.

(d) Neither is the fact that cash was recovered from the appellant in relation to the 2nd, 3rd, and 8th Charges of theft relevant. This is not of mitigating value as the money was not voluntarily returned, the appellant having been caught in the act of stealing. In addition, there is no evidence that the DJ considered this as an aggravating factor in reaching his decision on sentence.

(e) Furthermore, I commend the appellant for his decision to renounce his gang ties. I note however, that there is no apparent link between these ties and his present set of offences.

(f) Finally, I also accept that the appellant would suffer financially from his incarceration for a long period. However, in the absence of exceptional circumstances, this is not a mitigating factor: *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10]; *CCG v Public Prosecutor* [2022] SGCA 19 at [6].

8 For the above reasons, I agree with the DJ that it would be expedient for the protection of the public that the person should be detained in custody for a substantial period of time, per s 304(2) of the CPC.

9 I conclude by stating that this is not a case where a long imprisonment sentence is being imposed on a first-time offender for theft and drug offences. This is a case where the appellant has been given numerous opportunities by the justice system to come clean and turn over a new leaf. He was first given a sentence of probation in 1986. He was offered a further opportunity to reform through the imposition of Reformative Training in 1989. From 1989 to 1992, he was convicted a further four times, each time being sentenced to a fine. Despite all this, he continued his spree of offending. The present imposition of PD comes after two previous stints of CT and multiple terms of imprisonment, with the appellant reoffending shortly after his release each time. It is unfortunate that after so many chances to realise the error of his ways, the appellant has not done so. In fact, in his PD Suitability Report, it was noted that he "felt disgruntled that his bail kept getting extended, which allowed him to remain in the community and this contributed to more opportunities for his other offences to occur". This way of thinking shows a lack of remorse that the appellant would do well to reflect on.

10 In the circumstances, I do not find that the sentence of eight years' PD imposed by the DJ is manifestly excessive. I therefore dismiss the appeal against sentence.

Vincent Hoong
Judge of the High Court

Appellant in person;
Teo Lu Jia (Attorney-General's Chambers) for the respondent.