

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

[2023] SGHC 140

Magistrate's Appeal No 9169 of 2022/01

Between

Oliver Lim Yue Xuan

... Appellant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Appeal]

[Criminal Procedure and Sentencing — Sentencing — Young offenders]

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Oliver Lim Yue Xuan

v

Public Prosecutor

[2023] SGHC 140

General Division of the High Court — Magistrate's Appeal No 9169 of 2022/01

Tay Yong Kwang JCA

21 April 2023, 12 May 2023

12 May 2023

Tay Yong Kwang JCA:

1 The present appeal concerns a young offender who reoffended shortly after he was placed on probation by the Youth Court for various earlier offences. As a result, he was sentenced by the District Judge (“the DJ”) to reformative training for the new offence. He appeals to the High Court for a second chance at probation.

2 Ordinarily, an offender who reoffends while on probation would find it difficult to convince the court to place him on further probation. This is because his recidivism suggests that he has not learnt his lesson (*Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 (“*Boaz Koh*”) at [50]) or is perhaps even incapable of being rehabilitated through non-custodial means. Whether the court should place the repeat offender on probation again or impose some other form of punishment would depend on the facts of each case (*Praveen s/o*

Krishnan v Public Prosecutor [2018] 3 SLR 1300 (“*Praveen s/o Krishnan*”) at [2]).

Background facts

3 The appellant, Oliver Lim Yue Xuan, is a Singapore citizen born on 4 September 2003. He is now 19 years and 8 months old. On 19 November 2019, he was ordered by the Youth Court to undergo 24 months of probation for various offences, including theft, forgery, using a forged document and voluntarily causing hurt. This first Probation Order took effect on 21 November 2019. He was 16 years old at that time.

4 In early 2020, soon after he was placed on probation, the appellant conspired with one A’xl Gabriel Toh (“A’xl”) to abet a third person, Seth Wee, to forge a Singapore identity card (“forged NRIC”). The forged NRIC bore the appellant’s name and photograph and showed his birthdate correctly as 4th September. However, it stated falsely that the year of his birth was 2000 instead of 2003. The identification number of the forged NRIC, in which the first two numerals reflect the year of birth of the holder, also stated falsely that it was “T00xxxxxx” instead of the correct “T03xxxxxx”.

5 The appellant learnt that A’xl had engaged Seth Wee previously to create a forged identity card. The appellant wanted a forged NRIC of his own showing that he was older than his true age in order to purchase cigarettes and liquor. He was not of legal age at that time to purchase such items. Seth Wee subsequently created the forged NRIC for the appellant and handed it to A’xl.

6 The appellant instructed A’xl to safekeep the forged NRIC for him as the appellant was undergoing electronic tagging for six months and probation for 24 months with effect from 21 November 2019 for his past offences. The

appellant intended to collect the forged NRIC from A'xl but could not do so. This was because, on 21 July 2020, the police conducted a check at an apartment for suspected drug activities and A'xl and the appellant were in the apartment. During a search, the police found two forged NRICs on A'xl. One had A'xl's particulars while the other contained the appellant's particulars. The appellant was arrested.

7 Subsequently, on 12 September 2020, the appellant conspired with one Trevelio Peh to reproduce unlawfully an NRIC bearing his name and photograph but stating his year of birth as 2000 and its identification number as "T00[xxxxxx]". This was the subject of a second charge which was taken into consideration in the proceedings before the District Court. It is noted that the appellant repeated the same offence soon after the first forged NRIC was seized by the police on 21 July 2020.

8 On 12 July 2022, the appellant pleaded guilty to one charge under s 13(2)(c), read with s 13(4) of the National Registration Act (Cap 201, 1992 Rev Ed) ("NRA"). This pertained to his conduct relating to the first forged NRIC ("first NRA Offence"). As mentioned above, he consented to a similar charge relating to the second forged NRIC being taken into consideration for the purpose of sentencing ("second NRA Offence").

The DJ's decision

9 The DJ found that rehabilitation was the dominant sentencing consideration in the present case. The DJ considered that the appellant had committed the NRA offences while he was only 17 to 18 years old (in fact, the appellant was 16 years old at the time of the first NRA offence and eight days past his 17th birthday at the time of the second NRA offence). The DJ considered that an element of deterrence ought to feature in the sentence

imposed in view of the appellant's antecedents and the fact that he had committed the present offences very shortly after he was placed on probation. The DJ called for pre-sentencing reports to assess the appellant's suitability for probation and for reformatory training.

10 The appellant was found physically and mentally fit to undergo reformatory training in the Reformatory Training Report. The Senior Correctional Rehabilitation Specialist observed that the appellant "appeared to have committed the offences because of his association with negative peers", had since dissociated himself from those peers and had also built a better relationship with his parents. She recommended the appellant undergo reformatory training at level 1 intensity if such training was deemed to be appropriate.

11 Probation was not recommended for the appellant. The Probation Report dated 22 August 2022 ("Probation Report") stated that the appellant presented with a slew of risk factors including "limited insight and internalization and blatant disregard for the law", "poor compliance during prior stint on probation" and "continued association with negative peers, who endorsed his alcohol habits". It also noted the appellant's parents' permissiveness and tendency to minimise the appellant's misbehaviours. Further, the parents' inability to influence and supervise the appellant effectively did not bode well for his rehabilitation.

12 Against this backdrop and according weight to the Probation Officer's assessment, the DJ considered reformatory training to be the appropriate sentence. He therefore sentenced the appellant to undergo reformatory training with a minimum period of detention of six months ("the Sentence") in accordance with the recommendations in the Reformatory Training Report.

The parties' submissions

The appellant's submissions

13 The appellant submits that the Sentence is manifestly excessive and should be substituted with a further Probation Order. He argues that the DJ placed excessive weight on the Probation Officer's view that his parents were reluctant to comply with the recommended probation programme. He claims that his parents were simply reluctant to participate in the programme because it was then at the peak of the pandemic and that this reluctance does not evince a broader unwillingness to supervise him on their part.

14 The appellant also argues that the DJ accorded excessive weight to the fact that he reoffended early into his probation. In the appellant's view, there was inadequate consideration of his improving ties with his parents. His parents were separated from 2011 when his mother moved out of the matrimonial home. The appellant was only about eight years old then. She returned to live with the family in March 2019 after learning about the appellant's repeated troubles with the law. The appellant also highlights his academic progress, his vocational achievements and his concerted efforts to treat his Attention Deficit Hyperactivity Disorder ("ADHD").

The Prosecution's submissions

15 The Prosecution submits that there is no reason to depart from the Probation Officer's recommendation. It argues that the Probation Officer reviewed a wide range of information in coming to his view that further probation was not suitable for the appellant. The appellant lacks the familial support and supervision needed to complete a further order of probation effectively.

16 The Prosecution further argues that the appellant is recalcitrant. The DJ was therefore correct to sentence the appellant to undergo reformatory training as this incorporates a measure of specific deterrence.

My decision

17 When a court sentences a youthful offender, it approaches the task in two distinct but related stages (*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 (“*Al-Ansari*”) at [77]–[78]; approved by the Court of Appeal in *Public Prosecutor v ASR* [2019] 1 SLR 941). The first stage enjoins the court to identify and prioritise the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances of the case (*Boaz Koh* at [28]). It is not disputed that rehabilitation is the dominant sentencing consideration in the present case.

18 At the second stage, the court must select the appropriate sentence in view of the primary sentencing considerations identified and prioritised. As there is no statutory restriction against the making of a further Probation Order in the present case (see *Boaz Koh* at [51]) and rehabilitation remains the dominant sentencing consideration, probation is still an option here. Probation places rehabilitation at the forefront of the court’s deliberations as its primary objective is the reintegration of the offender back into society without the need for incarceration.

19 Reformatory training is also an option here. It offers the court a useful middle ground between sending the offender to prison and meeting the desire to rehabilitate a young offender. It may be most suitable where there is a need for both deterrence and rehabilitation (*A Karthik v Public Prosecutor* [2018] 5 SLR 1289 (“*A Karthik*”) at [67]).

20 Reoffending while under probation is generally regarded as a weighty consideration against a further Probation Order as it suggests that the offender has not learnt his lesson or is perhaps even incapable of doing so. This is not an inflexible rule of course and the court's task is to arrive at the appropriate sentence after a fact-sensitive inquiry. The court should bear in mind the severity of the latest offence(s), the offender's pattern of offending, any evidence of genuine remorse, any cause for assurance that the risk factors which caused the last attempt at probation to fail have been addressed effectively and any countervailing considerations (*Boaz Koh* at [50], [55]–[57]). In the final analysis, there must be room in the exercise of sentencing discretion for a more textured approach based on the potential of the offender to be amenable to reform (*Praveen s/o Krishnan* at [35]).

21 The Prosecution's case against further probation rests heavily on the appellant's poor attitude while undergoing probation as well as his continued reoffending. The appellant failed to observe curfew on occasions, tampered with his Electronic Monitoring System tagging device and his Community Service placements were terminated due to his possession of an electronic cigarette, late coming and defiance towards staff. The Prosecution stresses that the appellant committed the NRA Offences while on probation and was undeterred even after his arrest for the first NRA Offence as he asked Trevelio Peh to produce another forged NRIC for him less than two months later. The Prosecution argues that the appellant has spurned the benevolence of the law and ought to be sentenced to reformatory training whose structure would help to inject discipline into his wayward life.

22 In my view, while the appellant's reoffending and defiant attitude while undergoing probation are troubling, there are a number of unique factors which point to the real possibility that a second term of probation will be of real benefit

to the appellant's rehabilitation. There are also recent changes going on in his young life which show promise that the appellant is now truly ready to shake off his old self and develop into a responsible and law-abiding adult.

23 The appellant was below 16 years of age when he committed the offences which were the subject in the first Probation Order. Although he is now 19 years and 8 months old, he was only 16 years old at the time of the first NRA Offence and just past 17 years old when he committed the second NRA Offence. Some allowance must be given for immaturity and youthful folly.

24 The NRA Offences are not trivial matters and are not offences which one could commit on the spur of the moment without much thinking. They involve an official identity card which can be misused for various nefarious purposes. Nevertheless, it is important to note that the appellant committed these offences merely to facilitate his own underage purchases of alcohol and cigarettes and not for more evil purposes which could occasion harm or loss, such as cheating. Only the appellant's year of birth was falsified in the forged NRICs. It is not included in the Statement of Facts but the Probation Report stated that the appellant mentioned that he also wanted to use the forged NRIC to enter a bar in the event there was age-screening done. The whole purpose of the forged NRICs was therefore to allow the appellant to purchase items or to partake of activities that he was not eligible for at the material times because of his age.

25 The appellant was not recommended for probation in the detailed Probation Report. I am grateful for the detailed Probation Report prepared by Mr Aaron See, the Probation Officer. The Probation Officer is usually best apprised of an offender's overall circumstances and his reasoned recommendation carries much weight and deserves serious consideration by the

court. However, the court is not bound to accept the Probation Officer's recommendation but is free to come to an independent assessment on the matter based on the totality of the evidence before it (*Praveen s/o Krishnan* at [66]). This includes events and changes that have taken place after the preparation of the Probation Report and also any relevant events after the sentencing by the DJ.

26 I am aware that some of the changes in the appellant's circumstances came about as a reaction to the remarks in the Probation Report. As I indicated to counsel for the appellant at the first hearing before me, it is undesirable that the appellant's parents filed a joint affidavit attesting to their commitment to supervise the appellant more closely only after the DJ had sentenced the appellant. The adequacy of their supervision was called into question in the Probation Report and any changes that the appellant's parents wished to highlight should have been placed before the DJ.

27 Nevertheless, I am persuaded that the appellant's parents have now awakened to the truth that they must do much more for their son than what they had been doing in the past. The appellant's parents claimed that they have increased their supervision of the appellant since the Probation Report was prepared and will continue to do so to minimise the risk of him reoffending. I accept this as genuine as it comports with their other efforts to help the appellant turn away from crime. The appellant's parents moved the family home from Katong to Jalan Tambur in mid-2019 to help the appellant dissociate from negative peers. The appellant's father has reduced his overseas engagements since September 2019 to spend more time with his son despite the fact that he is the only one working to support his family of six. I note at this juncture that the Probation Report states that the family resides in a purchased semi-detached house and that the appellant's parents reported that the family was financially

stable. The affidavit filed by the appellant's parents also speaks of their present efforts to counsel the appellant on a daily basis and that they managed to persuade the appellant to resume treatment of his ADHD in September 2022 despite his initial reluctance. The appellant was diagnosed with ADHD since 2011.

28 The Prosecution submits that any commitment on the appellant's parents' part to supervise the appellant closely was already considered by the Probation Officer in arriving at his assessment that probation is not suitable for the appellant. The Probation Officer took the view that the appellant's parents' permissiveness resulted in the appellant's repeated risk-taking behaviour. He also observed that the appellant and his parents were unwilling to seek help for the appellant's psychiatric and psychological concerns and this would be a hindrance to the appellant's rehabilitation.

29 The appellant was reported to have a distant relationship with his father in November 2019. Their relationship was described as "cordial" in September 2021 and as "close" in the Probation Report of 22 August 2022. The parents provided details on how they have fostered their relationship with the appellant and have grown closer to him.

30 The appellant's mother returned to the family in March 2019 after learning about the appellant's repeated troubles with the law. It is true that her reconciliation with the father and her return to the family did not appear to have helped to prevent the appellant from committing the NRA Offences in 2020. However, the appellant's parents were separated between 2011 and early 2019. In 2011, the appellant was only eight years old and was diagnosed with ADHD. By early 2019, he was 15 years old. I repeat here that when he committed the NRA Offences, he was between 16 and just past 17 years in age. For much of

his childhood years, he lacked his mother's constant care and presence in his life and had a distant relationship with his father. The appellant and his parents, in particular the mother, must be given sufficient time to restore and rebuild their lost relationship. Indeed, the Probation Report prepared for the appellant's earlier offences noted that his parents' separation and the father's lack of presence within the family had affected the appellant adversely in his developmental years and that resulted in him developing delinquent traits and associating with negative peers. The appellant also stated that he heeded his parents' advice to distance himself from negative peers in late 2020 and that his relationship with his family improved since he stopped misbehaving in October 2021.

31 One could be cynical and say that the lack of parental love and care for some eight years did not appear to have affected the appellant's elder sister and his two younger sisters adversely in that they did not engage in unlawful conduct. Individuals, even within the same family, may develop differently and have different traits and levels of resilience in life. To the sisters' credit, they appear to be doing well in their lives. One certainly cannot extrapolate from this that the appellant was inherently bad instead of having been affected quite adversely by his parents' relationship in his earlier years.

32 In any event, I consider the parents' heightened awareness and the continuing improvement in the relationship between them and the appellant since the time of the Probation Report to be a material change in the appellant's circumstances. This development is very promising in the context of the appellant's situation (where he was deprived of parental presence and care for some eight years of his childhood) and it can be a significant protective factor to assist the appellant on his journey to reform from his previous tendency to engage in misbehaviour and unlawful conduct.

33 The appellant has also become acutely aware of the seriousness of his present circumstances. He knows he is at a crucial turning point in his life. His willingness and recent efforts to seek treatment for his ADHD is evidence of this. The appellant's ADHD was not managed actively at the time he committed the NRA Offences in 2020. The appellant had stopped attending his psychiatric and counselling appointments and was also not engaged constructively as his usual coping mechanisms of sport and exercise were unavailable to him due to COVID-19 restrictions. I find it encouraging that the appellant was willing to consult a forensic psychologist to address his ADHD in 2022 and has continued to consult her with regularity.

34 It is even more promising that the appellant has managed to complete his polytechnic studies successfully at the end of the academic year 2022. He has obtained a Diploma in Business Information Systems and his graduation ceremony took place recently on 3 May 2023. This significant event occurred after his sentencing by the DJ. The appellant may not be a stellar student but he had remarked to the Probation Officer that he felt that education was important as it would affect his career prospects. He has now fulfilled his declared determination to improve his academic performance in order to obtain a diploma. He has demonstrated a positive desire to change and the conditions in his family life are now much more conducive to helping him with the desired change.

35 Notably, his academic achievement comes on the back of him completing his internship at Rayton Solutions Pte Ltd between March and July 2022. The internship was part of the polytechnic's requirements. The Probation Report stated that the operations manager of that company commented that the appellant was helpful to his colleagues and was able to control his emotions

when others tried to find fault with him. He was also offered continued employment as a team leader from 1 August 2022 to 14 October 2022.

36 The overall signs point to cause for optimism in the appellant's prospects for rehabilitation without the need for incarceration. I am satisfied that his reoffending during the earlier Probation Order can be explained by his young age and unhappy childhood and that the other factors discussed above provide sufficient basis to consider making a further Probation Order in the circumstances of this case.

37 At the first hearing of this appeal, I reserved my decision and invited the Probation Officer to put forward his proposals for a further Probation Order in the event that the court decides to make such an order for the appellant. I am grateful again to the Probation Officer, Mr Aaron See, who has responded very helpfully with his recommendations in his letter to the court dated 5 May 2023. The recommendations are that the appellant should:

- (a) undergo 24 months of split probation (four months of intensive probation, followed by 20 months of supervised probation);
- (b) abide by a time restriction from 10.00pm to 6.00am daily;
- (c) be under electronic monitoring for a period of four months or until he is enlisted for National Services (whichever is earlier);
- (d) perform 80 hours of community service;
- (e) undergo psychiatric and/or psychological treatment and comply with any prescribed medication;

- (f) undergo an assessment of his alcohol consumption habits and receive treatment as necessary;
- (g) undergo a court-ordered review in six months' time; and
- (h) that the appellant's parents should be bonded for a sum as security for his good behaviour.¹

38 These recommendations were forwarded to both parties before this second hearing. The appellant has indicated to the court that he is willing to abide by the proposed terms for a further probation order or any other terms that the court deems appropriate. He also undertakes to the court that he will comply dutifully with all the terms. His parents have confirmed their agreement to sign a bond for \$10,000 (an amount suggested by me at the second hearing) as security for his good behaviour and compliance with the proposed terms. They also agree to be jointly and severally liable under the bond.

39 The Prosecution comments that the proposed terms are more favourable to the appellant when compared with his earlier probation. The Probation Officer's recommendation now is for the appellant to undergo four months of intensive probation and 20 months of supervised probation whereas previously, the appellant had to undergo six months of intensive probation and 18 months of supervised probation. His previous time restriction was from 9pm to 6am but the recommendation now is from 10pm to 6am. The present recommendation is for the appellant to undergo electronic tagging for four months, two months shorter than that imposed on him previously. Further, the appellant was previously also ordered to reside in an approved home for a period of time but there is now no recommendation for such a requirement.

¹ Information to Court dated 5 May 2023.

40 I do not think that these highlighted differences mean that the appellant is being treated more leniently on his second probation. The Probation Officer is obviously taking a pragmatic approach because we are no longer dealing with a 16 or 17-year-old but with someone who is now 19 years and 8 months old. The appellant is also likely to be enlisted for National Service soon and the Probation Officer has factored this into his consideration. The appellant informs the court that he has not received his enlistment notice yet but the call-up can be expected in the near future unless the appellant is found to be unfit for National Service, something which is not likely since he was found not long ago to be fit to undergo Reformative Training.

41 As the appellant is now 19 years and 8 months old, I decide to order a time restriction from 12 midnight to 6am so as not to hamper his social life unduly. All the terms are subject to variation at the discretion of the Probation Officer whenever the need arises because of the appellant's coming National Service requirements or any other special circumstances. The appellant is to seek the Probation Officer's prior approval before he deviates from any of the terms. The appellant has been warned that any breach of this Probation Order may result in his original sentence being restored or in some other punishment that the court may decide to impose.

42 The appellant has asked for a second chance. He is now given what he has asked for. It is up to him and his parents now to fulfil what they have professed they will do. The appellant is again advised to curb his alcohol consumption habit because that is one weakness that has got him into trouble previously. If he does not do so, it is very likely to cause him trouble in the future. If he completes this probation dutifully and uneventfully, he will have done well. If he proves me wrong to have been so optimistic about his prospects

for a radical change in his young life, he disappoints his parents and he is the one who will have to suffer the consequences of his own actions.

Conclusion

43 Accordingly, I allow the appeal against sentence. I substitute the reformatory training order imposed by the DJ with a Probation Order in the terms recommended as stated above but subject to the modification in time restriction (12 midnight to 6am) and to the power of the Probation Officer to vary the terms as stated in [41] above. The appellant is to seek the Probation Officer's prior approval before he deviates from any of the terms. This Probation Order is to take effect from Monday 15 May 2023 so that the Probation Officer can be informed. A copy of this judgment will be sent to the Probation Officer.

44 The appellant's parents are to sign a bond for \$10,000 by Monday 15 May 2023 as security for the appellant's good behaviour and compliance with the Probation Order. They are to be jointly and severally liable under the bond.

Tay Yong Kwang
Justice of the Court of Appeal

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for the appellant;
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for the respondent.