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

[2023] SGHC 168

Magistrate's Appeal No 9060 of 2022

Between

Geevanathan s/o
Thirunavakarusu

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Mandatory treatment order]

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Introduction

1 This appeal raised the question of the proper interpretation of s 337(2)(*b*) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"). This impacts the availability of a Mandatory Treatment Order ("MTO") as a sentencing option for offenders convicted of LT-2 drug offences or, more generally, for offenders convicted of offences with a mandatory minimum sentence that engaged the operation of s 337(1)(*b*)(ii) of the CPC.

2 The appellant filed this appeal against the sentence imposed by the District Judge (the "DJ") in *Public Prosecutor v Geevanathan s/o Thirunavakarusu* [2022] SGDC 103 ("GD"). The appellant pleaded guilty to a charge of consuming methamphetamine without authorisation, an offence under s 8(*b*)(ii) of the Misuse of Drugs Act, Cap 185 (2008 Rev Ed) ("MDA"). He

was liable to be punished under s 33A(2) of the MDA under the LT-2 sentencing regime, as he was previously convicted of an LT-1 offence for the consumption of monoacetylmorphine and punished under s 33A(1) of the MDA. A charge of committing mischief by fire under s 435 of the Penal Code 1871 (2020 Rev Ed) (the "PC") was taken into consideration for the purpose of sentencing.

3 The DJ sentenced the appellant to the mandatory minimum sentence of seven years' imprisonment and six strokes of the cane. The DJ rejected the Defence's submission for the court to call for a MTO suitability report.

4 On appeal, the appellant submitted that the DJ had erred in not calling for a MTO suitability report. He requested that the court exercise its discretion under s 337(2)(*b*) of the CPC to call for a MTO suitability report under s 339 of the CPC.

5 At the conclusion of the hearing on 27 March 2023, I dismissed the appeal. I set out my grounds of decision below.

Facts

6 The appellant admitted to the Statement of Facts without qualification. On 18 May 2020 at about 0410 hours, he was arrested in connection with a fire that occurred the previous day in a flat in Jurong. Upon his arrest, he was brought back to Woodlands Police Divisional Headquarters ("Woodlands PDHQ").

7 At Woodlands PDHQ, the appellant provided two bottles of his urine samples that were sealed and marked in his presence. These samples were sent to the Health Sciences Authority for testing. Both his urine samples tested

positive for methamphetamine, a Specified Drug listed in the Fourth Schedule to the MDA.

8 The appellant admitted to smoking "ice", also known as methamphetamine, sometime in the early morning of 17 May 2020. He had been smoking "ice" daily for about ten months prior to his arrest. His daily consumption of "ice" amounted to approximately 0.5 to one grams of the drug.

9 Prior to the commission of this offence, the appellant had been convicted on 12 August 2013 on one count under s 8(*b*)(ii) and punishable under s 33A(1) of the MDA *vide* DAC 24486/2012. This was an LT-1 offence for consuming monoacetylmorphine, a specified drug, for which he was sentenced to five years' four months' imprisonment and three strokes of the cane. As this conviction had not been set aside, the appellant was thus liable to be punished under s 33A(2) of the MDA *ie*, as an LT-2 offender.

Prosecution's case below

10 The Prosecution submitted below for the mandatory minimum sentence of seven years' imprisonment and six strokes of the cane. There were three key aspects to its case.

11 First, the Prosecution agreed with the Defence that as a matter of law, the court was not precluded from imposing a MTO. On this point, I noted that the Prosecution had since changed its position on appeal (rightly, in my view, as I will explain in my decision under Issue 1 below) to argue that the court *was* precluded from calling for a MTO report as a matter of law.

12 Second, the Prosecution objected to the calling of the MTO suitability report. This was because the appellant's rehabilitative prospects were

questionable and there was no evidence suggesting that the appellant was suffering from any mental condition that contributed to his drug consumption offence.

13 Third, and in any event, the Prosecution submitted that a MTO should not be ordered as it was not expedient having regard to the circumstances including the nature of the offence and the character of the appellant.

Appellant's case below

14 The appellant submitted that as a matter of law, the court was not precluded from ordering a MTO under s 337(1) of the CPC even though he was convicted of an LT-2 offence which involved a mandatory minimum sentence of seven years' imprisonment and six strokes of the cane.[1] This is because ss 337(2)(*a*) and 337(2)(*b*) of the CPC, respectively, allowed the court to impose a MTO even if the offender is:

(a) a person mentioned under s 337(1)(*d*) or (*g*) of the CPC; or

(b) convicted of an offence under the Misuse of Drugs Act 1973, the Misuse of Drugs Regulations or the Intoxicating Substances Act 1987, after having previously been admitted to an approved institution or an approved centre.

Crucially, s 337(2)(*b*) of the CPC applied here since the appellant had been convicted on a MDA charge and had previously been admitted to a Drug Rehabilitation Centre ("DRC"), an approved institution. This subsection applies notwithstanding that the appellant was convicted of an LT-2 offence.

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1 Record of Appeal ("ROA") (Plea in Mitigation) at p 88.

15 The appellant further submitted that the court should call for a MTO suitability report to assess his suitability for a MTO. At the stage of assessing whether to call for the report, the court need only be satisfied that there was a real prospect of rehabilitation: *GCX v Public Prosecutor* [2019] 3 SLR 1325 ("*GCX*") at [41]. Three factors supported the calling of the report.[2]

16 First, there was a causal or contributory link between the appellant's mental illness and the offence. In this regard, the appellant referred to two psychiatric reports. The first was a report dated 29 May 2020 prepared by Dr Lucas Lim from the Institute of Mental Health (the "1st IMH Report"). The report was prepared when the appellant was first charged in court for the offence of mischief by fire and had been ordered to be remanded at IMH to undergo psychiatric observation pursuant to s 247(3) of the CPC. The second was a report dated 16 September 2021 prepared in response to the appellant's counsel's request (the "2nd IMH report"). These reports indicated that the appellant was diagnosed by Dr Lucas Lim with "Drug Induced Psychosis" while also having a "background of Stimulant Use Disorder (methamphetamine)".

17 Second, there was also evidence of the appellant's long-standing struggles with mental illness. The appellant had made tremendous progress since May 2020, indicating his rehabilitative potential.

18 Third, the court should impose a MTO. The appellant required rehabilitation. A custodial term of seven years would have undone the progress that the appellant had made in turning his life around over the past two years.

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2 ROA (Plea in Mitigation) at p 85; p 92.

The DJ's decision

19 The DJ declined to call for a MTO suitability report. The DJ disagreed with both the Prosecution and the Defence that the appellant was eligible for a MTO as a matter of law (GD at [27]). In the DJ's view, various subsections in s 337(1) of the CPC applied to *prima facie* exclude the imposition of any community order (including a MTO) (GD at [23]):

> (a) Section 337(1)(*b*)(ii) of the CPC: The LT-2 offence entailed a mandatory minimum imprisonment term and caning and was an offence that was punishable with a term of imprisonment which exceeds three years.
>
> (b) Section 337(1)(*d*) of the CPC: The appellant had previously been sentenced to a term of imprisonment exceeding three months.
>
> (c) Section 337(1)(*ga*) of the CPC: The LT-2 offence was one under the MDA and the appellant had previously been admitted to an approved institution.

20 Although both the Prosecution and the Defence appeared to accept that s 337(2)(*b*) of the CPC allowed the court to nonetheless impose a MTO, the DJ disagreed. The plain reading of s 337(2)(*b*) of the CPC suggested that the court was not precluded from considering MTO as a sentencing option even if the accused was convicted of an LT-2 offence, but the DJ took the view that this was not the correct interpretation. The purpose of the Community-Based Sentencing ("CBS") regime was to target offences on the "rehabilitation end of the spectrum". An LT-2 offence would not fit this category (GD at [28]–[29]). An offender facing an LT-2 offence would presumptively possess low rehabilitative potential as he would already have drug consumption antecedents

and a prior conviction for an LT-1 offence and/or previous admissions to a DRC.

21 Furthermore, the Defence's interpretation would lead to an absurd situation where an LT-2 offender facing a mandatory minimum sentence of seven years imprisonment could, in theory, be eligible for a MTO, simply because he had a previous admission to an approved institution, but the same would not be available to an offender convicted for a lesser drug consumption offence (GD at [30]).

22 Finally, the correct interpretation of the phrase "*after* having previously been admitted to an approved institution or an approved centre" (emphasis added) referred to in s 337(2)(*b*) of the CPC should be limited in scope (GD at [31]). It did not refer to any admission that can be found in an offender's drug history but is limited to admissions that form the *basis* of the MDA charge faced by the offender. For convenience, I refer to this as the "DJ's Interpretation". By way of example, an offender would be eligible for a MTO at the time of his LT- 1 conviction, as he was convicted for his LT-1 offence after he was admitted to a DRC and this admission formed the basis of his LT-1 offence. In contrast, an offender would not be eligible for a MTO at the time of his LT-2 conviction since this was committed after his LT-1 offence and the LT-1 offence would form the basis of his LT-2 offence (GD at [32]).

23 The DJ held that even if he was wrong on the above interpretation of s 337(2)(*b*) of the CPC, the considerations set forth in *GCX* militate against the calling of a MTO report. The appellant's more than 20-year association with drugs did not speak well of his rehabilitative potential (GD at [45]). Furthermore, the purported "Drug Induced Psychosis" as shown in the 1st IMH report was merely a symptom and not a form of mental illness (GD at [48]).

Even if it was a mental illness, the two IMH reports did not show that there was any link between the appellant's purported mental illness and the offence committed (GD at [53]). Hence, the Defence's mere assertion of mental illness (drug induced psychosis) could not form the basis of calling for a MTO suitability report (GD at [54]).

The grounds of appeal

24 On appeal, the appellant submitted that the DJ erred in finding that the court was precluded from calling for a MTO suitability report.[3] The DJ's Interpretation in relation to s 337(2)(*b*) of the CPC was strained and a MTO remained an available sentencing option under this provision notwithstanding an offender's status as an LT-2 offender. The appellant submitted that the DJ erred in law and fact by failing to call for a MTO suitability report to assess his rehabilitative potential. The threshold for calling such a report was low and the evidence showed that the appellant possessed a real prospect of rehabilitation. In particular, the DJ erred in both fact and law in finding that the appellant's drug induced psychosis and substance use disorder were not mental illnesses and did not bear a contributory link with his offending.

Issues for determination

25 Based on the foregoing, there were two issues that I had to consider. First, was the appellant eligible for a MTO as a matter of law? This was essentially a question of interpreting the relevant CPC provisions under ss 337(1) and 337(2) of the CPC. I refer to this as "Issue 1". Second, if Issue 1 was answered in the affirmative, should the DJ have called for a MTO suitability report? I refer to this as "Issue 2".

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3 ROA at p 12.

My decision

26 In relation to Issue 1, I found that the appellant was not eligible for a MTO as a matter of law, as the *prima facie* exclusion in s 337(1)(*b*)(ii) of the CPC applied to bar the making of any community order (including a MTO) in respect of the present LT-2 offence which entails a "mandatory minimum sentence". The correct interpretation of s 337(2)(*b*) of the CPC is that it does not provide a carve-out for s 337(1)(*b*)(ii) of the CPC involving offences with a "mandatory minimum sentence".

27 Turning to Issue 2, there was strictly no need for me to answer this question given my conclusion on Issue 1. In any case, I found that the DJ did not err in declining to call for a MTO suitability report given the appellant's questionable rehabilitative potential. This was due to his long history of drug offending. The appellant's recent progress was no doubt encouraging but it did not tip the scales in favour of rehabilitation.

28 I shall proceed to set out the parties' submissions on appeal and the reasons for my decision.

Issue 1: Whether the appellant was eligible for a MTO as a matter of law

29 The parties did not dispute that s 337(1) of the CPC *prima facie* precludes the imposition of community orders such as a MTO for the reasons stated by the DJ. Section 337(1)(*b*)(ii) of the CPC applies in the present case since the LT-2 offence here carried a mandatory minimum sentence.

30 The question then was whether any of the subsections (which I will also refer to as "carve-outs", as the DJ had) under s 337(2) of the CPC applied to nonetheless empower the court to grant a MTO in the present situation. This

was essentially an issue of statutory interpretation involving the carve-outs under s 337(2) of the CPC. At the hearing before me, the parties agreed that this was the key issue arising in this appeal.

31 I begin by setting out the relevant provisions in s 337 of the CPC below:

> **Community orders**
>
> **337.**— (1) Subject to subsections (2) and (3), a court must not exercise any of its powers under this Part to make any community order in respect of —
>
> (*a*) an offence for which the sentence is fixed by law;
>
> (*b*) an offence for which any of the following is prescribed by law:
>
> (i) a specified minimum sentence of imprisonment or caning;
>
> (ii) a mandatory minimum sentence of imprisonment, fine or caning;
>
> …
>
> (*d*) a person who had previously been sentenced to a term of imprisonment exceeding 3 months, other than a term of imprisonment served by him or her in default of payment of a fine;
>
> …
>
> (*g*) a person who has been admitted —
>
> (i) at least twice to an approved institution under section 34 of the Misuse of Drugs Act 1973 (called in this section an approved institution);
>
> (ii) at least twice to an approved centre under section 17 of the Intoxicating Substances Act 1987 (called in this section an approved centre); or
>
> (iii) at least once to an approved institution, and at least once to an approved centre;
>
> (*ga*) an offence under the Misuse of Drugs Act 1973, the Misuse of Drugs Regulations or the Intoxicating Substances Act 1987, if the offender had previously

> been admitted to an approved institution or an approved centre;
>
> …
>
> (*i*) an offence which is punishable with a term of imprisonment which exceeds 3 years.
>
> (2) A court may not make a mandatory treatment order in respect of any case referred to in subsection (1) except that it may do so under section 339 even if the offender —
>
> (*a*) is a person mentioned in subsection (1)(*d*) or (*g*);
>
> (*b*) is convicted of an offence under the Misuse of Drugs Act 1973, the Misuse of Drugs Regulations or the Intoxicating Substances Act 1987, after having previously been admitted to an approved institution or an approved centre;
>
> (*c*) is convicted of an offence that is punishable with imprisonment for a term exceeding 3 years but not exceeding 7 years, and is prescribed.
>
> …

32 The parties did not dispute that the statutory interpretation framework laid down in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") provided useful guidance. However, they differed on how the framework ought to be applied. On the one hand, the appellant argued that s 337(2)(*b*) of the CPC empowered the court to grant a MTO even in the present case involving an LT-2 offence which carried a mandatory minimum sentence. On the other hand, the Prosecution argued that it did not.

33 The broad legal principles contained in the three-step framework towards statutory interpretation laid down in *Tan Cheng Bock* at [37] and [54(c)] are as follows:

> (a) The court must start by ascertaining the possible interpretations of the provision, having regard not just to the text, but also to the context of the provision within the written law as a whole.

(b) The court must then ascertain the legislative purpose or object of the specific provision. The purpose should ordinarily be gleaned from the text itself. However, extrinsic material may be used to ascertain the meaning of the provision if the provision is ambiguous or obscure on its face.

(c) The court then compares the possible interpretations of the provision against the purpose of the relevant part of the statute. The interpretation which furthers the purpose of the written text should be preferred.

34 Specifically, reference to extrinsic material is only permissible in the situations prescribed by s 9A(2) of the Interpretation Act 1965 (2020 Rev Ed) (*Tan Cheng Bock* at [54(c)(iii)]):

(a) If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) is clear, extrinsic material can only be used to confirm the ordinary meaning but not to alter it.

(b) If the provision is ambiguous or obscure on its face, extrinsic material can be used to ascertain its meaning.

(c) If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) leads to a manifestly absurd or unreasonable result, extrinsic material can be used to ascertain the meaning of the provision.

35 In deciding whether to consider extrinsic material and what weight to place on it, the court should have regard to, among other things, whether the

material: (a) is clear and unequivocal; (b) discloses the mischief aimed at or the legislative intention underlying the statutory provision; and (c) is directed to the very point of statutory interpretation in dispute: *Tan Cheng Bock* at [54(c)(iv)]. It must be borne in mind that primacy should be given to the text and statutory context over any extrinsic material (*Tan Cheng Bock* at [43]). Purposive interpretation is "not an excuse for rewriting a statute" (*Tan Cheng Bock* at [50]).

36 To recapitulate, the DJ's Interpretation was that the phrase "*after* having previously been admitted to an approved institution or an approved centre" (emphasis added) referred to in s 337(2)(*b*) of the CPC should be limited in scope (GD at [31]). It did not refer to any admission that can be found in an offender's drug history but was limited to only those admissions which form the basis of the MDA charge faced by the offender. Both parties submitted on appeal that the DJ's Interpretation ought to be rejected, albeit for different reasons.

37 The appellant submitted that the correct interpretation of s 337(2)(*b*) of the CPC was that an offender should *prima facie* be eligible under s 337(2)(*b*) of the CPC for a MTO subject to the conditions that he was convicted of an offence under the MDA and was previously admitted to a DRC. For convenience, I refer to this as the "Appellant's Interpretation".

38 According to the appellant, the language of the statute was clear and unambiguous.[4] Adopting the DJ's Interpretation would immediately prevent an LT-2 offender from obtaining a MTO Report simply on account of his substantial antecedents. There may be genuine, underlying psychological

4 Written Submissions of Appellant ("WSA") at para 19.

reasons which may have contributed to the offender's behaviour, of which he was not aware in the history of his offending.[5]

39 The appellant submitted that the DJ failed to consider s 337(2)(*b*) within the context of the other provisions of the CPC. The DJ's Interpretation sought to prevent situations where "serious" offenders with substantial antecedents and low rehabilitative potential could suddenly avail themselves of a community-based sentence. The appellant submitted that this concern was already accounted for under the other provisions in s 337(1) of the CPC, including s 337(1)(*b*)(ii) of the CPC which applies to an offence for which there is a mandatory minimum sentence.[6]

40 Furthermore, the appellant submitted that the DJ had conflated s 337(2)(*b*) with ss 337(1)(*g*) and 337(1)(*ga*). The latter sub-section already took into account drug offenders who had substantial antecedents with low rehabilitative potential.[7] Section 337(2)(*b*) did not overlap with ss 337(1)(*g*) or 337(1)(*ga*) as s 337(2)(*b*) dealt instead with situations involving drug offenders who had substantial antecedents but who may have been influenced by an underlying psychological condition or mental illness. These individuals remained eligible for a MTO.

41 In response, the Prosecution submitted that s 337(2) of the CPC did not apply to LT-2 offences. This is because s 337(2) of the CPC confers MTO eligibility to categories of offences that are carved out from *corresponding* categories in s 337(1). The corresponding nature of the provisions in ss 337(1)

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5 WSA at para 20.

6 WSA at para 24.

7 WSA at para 25.

and 337(2) of the CPC was critical. Section 337(2)(*b*) provides a carve-out for offences falling under s 337(1)(*ga*) of the CPC, its *corresponding* category. None of the other subsections in s 337(2) of the CPC corresponds to s 337(1)(*b*)(ii) of the CPC (an offence which carries "a mandatory minimum sentence of imprisonment, fine or caning") ("Prosecution's Interpretation"). Accordingly, there was no subsection within s 337(2) of the CPC that the appellant could rely on in the present case for the court to grant a MTO in the face of the exclusion under s 337(1)(*b*)(ii) of the CPC that applied to the appellant's LT-2 offence which carried a mandatory minimum sentence.

42 At the outset, I summarise my conclusion on Issue 1 and the sub-issues which I had considered. I shall elaborate further on the reasons for my analysis in due course.

43 In reasoning towards my conclusion in respect of Issue 1, I identified three sub-issues to be addressed arising from the parties' arguments:

(a) whether there was an overlap between ss 337(1)(*b*) and 337(1)(*ga*) of the CPC;

(b) whether there was a relationship of correspondence between the subsections in ss 337(1) and 337(2) of the CPC; and

(c) whether there was a corresponding carve-out in s 337(2) for s 337(1)(*b*)(ii) of the CPC.

44 I agreed with the Prosecution that there was *no* overlap between ss 337(1)(*ga*) and 337(1)(*b*)(ii) of the CPC. This meant that the present LT-2 offence, being an offence which entailed a mandatory minimum sentence, engaged s 337(1)(*b*)(ii).

45 In addition, I agreed with the Prosecution's Interpretation that there was a relationship of correspondence between s 337(1) and s 337(2) of the CPC.

46 I further found that there was no provision in s 337(2) corresponding to s 337(1)(*b*)(ii) of the CPC which the appellant could avail himself of to allow for the grant of a MTO.

47 Having set out the relevant context for the subsequent analysis, I explain my reasoning on each of these sub-issues below.

Whether there was an overlap between s 337(1)(b) and s 337(1)(ga) of the CPC

48 According to the Prosecution, s 337(1) of the CPC lists *distinct* categories of offences that are ineligible for community orders. In support of this argument, it cited the three-Judge High Court decision in *Mohamad Fairuuz bin Saleh v Public Prosecutor* [2015] 1 SLR 1145 ("*Mohamad Fairuuz*") at [72], where the court observed that the categories of offences set out within s 337(1) of the CPC which involve sentences that are "fixed by law" (s 337(1)(*a*)), a "specified minimum sentence" (s 337(1)(*b*)(i)), or a "mandatory minimum sentence" (s 337(1)(*b*)(ii)) were distinct. The court reasoned that were this not the case, s 337(1)(*b*) of the CPC would be otiose. Adopting the above reasoning, the Prosecution submitted that the subsection pertaining to an "offence under the Misuse of Drugs Act 1973" under s 337(1)(*ga*) of the CPC would similarly be *distinct* (and *separate*) from the mandatory minimum sentences referred to in s 337(1)(*b*)(ii) of the CPC. This meant that MDA offences that carried mandatory minimum sentences are excluded from the ambit of s 337(1)(*ga*) of the CPC. Such offences under the MDA would have been subject to *separate* exclusion under s 337(1)(*b*)(ii) of the CPC.

49 The logical corollary of the Prosecution's argument above was that s 337(1)(*ga*) of the CPC only applied to offences under the MDA which *did not* carry a mandatory minimum sentence. In my view, this argument was undoubtedly correct. Section 337(1)(*ga*) of the CPC should be read such that it does not overlap with s 337(1)(*b*)(ii). This is because Parliament shuns tautology and does not legislate in vain (*Tan Cheng Bock* at [38]), such that a contrary reading of s 337(1)(*b*)(ii) of the CPC would render the provision otiose. The implication of this conclusion was that the present LT-2 offence, being an offence with a mandatory minimum sentence, would engage s 337(1)(*b*)(ii) of the CPC rather than s 337(1)(*ga*) of the CPC.

50 I was also in agreement with the Prosecution's submission that every single subsection in s 337(1) must necessarily be distinct from each other. This is supported by the court's observations in *Mohamad Fairuuz* on the distinctiveness of the subsections in s 337(1) of the CPC.

51 In addition, I did not accept the appellant's argument that even in respect of offences under the MDA for which there are no mandatory minimum sentences, there was nothing in the Act which allowed the Prosecution to adduce evidence of a previous admission to an "approved institution" referred to in s 337(1)(*ga*) of the CPC other than for the purposes of specific offences under s 33A(1), s 33A(1A), s 33A(1B), s 33A(2), s 33(4AA) and s 33(4AB) of the MDA. The appellant's position was that the Prosecution's Interpretation of s 337(1)(*ga*) (*ie*, that it would only apply to offences that did not carry a mandatory minimum sentence) should be rejected since it would effectively render s 337(1)(*ga*) otiose. Adopting the Prosecution's Interpretation, the Prosecution would still be barred from adducing evidence of an offender's "previous admission" to an approved institution or approved centre such that

s 337(1)(*ga*) could never be engaged. Accordingly, the appellant urged the court to find that s 337(1)(*ga*) must be read to overlap with s 337(1)(*b*) of the CPC.

52 In my view, the appellant's argument was misconceived. This is because there was no legislative or common law rule to bar the Prosecution from adducing evidence of an offender's previous admission to an approved institution or approved centre in the form of the record of his antecedents. Indeed, it is entirely to be expected that in addressing the court on sentence upon the conviction of an accused, criminal records of the accused including such antecedents may be brought to the court's attention, as provided for in s 228(2)(*a*) of the CPC.

Whether there was a relationship of correspondence between the subsections in s 337(1) and s 337(2) of the CPC

53 Flowing from the above analysis, the plain wording of s 337(2) of the CPC and the legislative context showed that the various subsections within s 337(2) of the CPC bore a relationship of *correspond*ence to the subsections in s 337(1) of the CPC. From a plain reading of s 337(2), the phrase "in respect of any case referred to in subsection (1)" supported the Prosecution's position that s 337(2) was intended to *correspond* with the subsections in s 337(1).

54 In terms of the legislative context, the following examples pointed towards a relationship of correspondence between s 337(1) and s 337(2). Section 337(2)(*a*) of the CPC corresponds to both s 337(1)(*d*) and s 337(1)(*g*) of the CPC. More importantly, s 337(2)(*b*) of the CPC corresponds to s 337(1)(*ga*) of the CPC as the wording of both provisions is substantially the same. The former (s 337(2)(*b*)) relates to an offender who "is convicted of an offence under the Misuse of Drugs Act 1973, the Misuse of Drugs Regulations or the Intoxicating Substances Act 1987, after having previously been admitted

to an approved institution or an approved centre". The latter (s 337(1)(*ga*)) relates to "an offence under the Misuse of Drugs Act 1973, the Misuse of Drugs Regulations or the Intoxicating Substances Act 1987, if the offender had previously been admitted to an approved institution or an approved centre". Next, s 337(2)(*c*) of the CPC corresponds to s 337(1)(*i*) of the CPC. The former relates to an offender who "is convicted of an offence that is punishable with imprisonment for a term exceeding 3 years but not exceeding 7 years and is prescribed." The latter relates to "an offence which is punishable with a term of imprisonment which exceeds 3 years."

55 Next, any ambiguity arising from the different possible interpretations ought to be resolved in favour of the Prosecution's Interpretation upon an examination of the relevant extrinsic materials. The appellant referred to the statement by Minister K Shanmugam during the Second Reading of the Criminal Procedure Code Bill 2010 that "[not] every offender should be put in prison" in support of the point that the purpose behind the CBS regime was to give courts more flexibility in handling offenders who are on the rehabilitation end of the spectrum (*Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87) (see also [57] below). Based on this statement, the appellant submitted that his interpretation ought to be preferred to allow for the grant of MTOs even for serious offences such as LT-2 offences.

56 I was unable to accept that this advanced the appellant's case in any meaningful way. First and foremost, the above statement by Minister K Shanmugam was but a general statement reiterating the truism that not all offenders deserve custodial sentences. It did not provide any real support for the appellant's argument that the grant of MTOs for serious drug offenders such as

LT-2 offenders "would not be at odds with the purpose behind CBSs".[8] The more pertinent consideration in my view in addressing each case that comes before the courts is whether the purpose of the CBS regime would be *positively advanced* by such an interpretation.

57 Putting aside the above observation, I was unable to agree that Parliament intended for the CBS regime to apply to serious drug offenders. The Prosecution aligned itself with the DJ's reasoning (GD at [28]) that Parliament intended to exclude all offences that carried mandatory minimum sentences from the CBS regime. In my view, there was no room for any doubt that offenders who commit offences which attract mandatory minimum sentences (which plainly reflect their seriousness) do not fall within the "rehabilitation end of the spectrum" that Parliament intended for the CBS regime to target. Specifically, in the context of LT-2 offences, the severe punishment under this regime is reserved for the most serious of drug consumption offenders given their repeat offending, after having already been punished for an LT-1 offence. These offenders were referred to by then-Member of Parliament Kenneth Chen Koon Lap as "hard-core drug addicts" during the Second Reading of the Misuse of Drugs (Amendment) Bill in 1998 (*Singapore Parliamentary Debates, Official Report* (1 June 1998), vol 69). Parliament's intention to exclude such offences from the ambit of the CBS regime was evident from Minister K Shanmugam's speech during the Second Reading of the Criminal Procedure Code Bill 2010 (*Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87):

> CBS gives more flexibility to the Courts. Not every offender should be put in prison. *CBS targets offences and offenders traditionally viewed by the Court to be on the rehabilitation end of the spectrum*: regulatory offences, offences involving younger

[8] WSA at para 27.

> accused persons and persons with specific and minor mental conditions. For such cases, it is appropriate to harness the resources of the community. The offender remains gainfully employed and his family benefit from the focused treatment.
>
> [emphasis added]

58 When Parliament introduced the carve-outs in s 337(2) of the CPC via the Criminal Justice Reform Bill in 2018, there was no departure from its earlier intent and no suggestion whatsoever that it would extend MTO eligibility to LT-2 offenders.[9] The following remarks by then-Senior Minister of State Indranee Rajah support the Prosecution's submission that each of the subsections in s 337(2) of the CPC bore a relationship of correspondence to specific subsections in s 337(1) of the CPC (*Singapore Parliamentary Debates, Official Report* (19 March 2018), vol 94):

> The Mandatory Treatment Order ("MTO") will be made available for a prescribed list of more serious offences, which are punishable with up to seven years' imprisonment. This is up from the current availability of MTOs only for offences punishable with up to three years' imprisonment.

I accepted the Prosecution's point that this showed that Parliament intended for there to be correspondence between the exclusion in s 337(1)(*i*) of the CPC ("an offence which is punishable with a term of imprisonment which exceeds 3 years") and the exception in s 337(2)(*c*) of the CPC ("an offence that is punishable with imprisonment for a term exceeding 3 years but not exceeding 7 years").

59 The Appellant's Interpretation, when taken to its logical conclusion, would have led to an anomalous situation where offenders who were previously admitted to a DRC would automatically be eligible for consideration for a MTO

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9 Written Submissions of Respondent ("WSR") at para 15.

regardless of the seriousness of their present offences.[10] This would not accord with Parliament's intention for the CBS regime and MTOs in particular to be available for crimes at the "rehabilitation end of the spectrum" (*Singapore Parliamentary Debates, Official Report* (18 May 2010), vol 87). Accordingly, I agreed with the DJ's conclusion (GD at [30]) that this militated against adopting the Appellant's Interpretation.

60 For the reasons above, I accepted that the subsections in s 337(2) of the CPC correspond to the relevant subsections in s 337(1) of the CPC.

Whether there was a corresponding carve-out in s 337(2) for s 337(1)(b)(ii) of the CPC

61 I found that there was no provision within s 337(2) of the CPC corresponding to s 337(1)(*b*)(ii) of the CPC. This was manifestly clear from the 2017 Parliamentary Debates on Community Sentencing and Other Rehabilitative Options. When asked whether community orders could be extended to offences that carried mandatory minimum sentences, and whether the CBS regime was *not* intended for offences that carried mandatory minimum sentences, then-Senior Minister of State for Law Indranee Rajah provided the following clarifications (*Singapore Parliamentary Debates, Official Report* (11 September 2017), vol 94):

> This brings me to Mr Murali's point relating to the availability of CBS for offences with mandatory minimum or specified minimum sentences. One area where we think the line should be drawn is where mandatory minimum sentences are concerned. *Such sentences are only prescribed for very serious offences. Justice would not be served by imposing CBS for such offences.*
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> [emphasis added]

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10 WSR at para 16.

62 This being the case, there would accordingly be no operative (and *corresponding*) carve-out under s 337(2) of the CPC that the appellant can avail himself of to overcome the *prima facie* exclusion under s 337(1)(*b*)(ii) of the CPC (applying to an offence which carries "a mandatory minimum sentence of imprisonment, fine or caning"). This wholly disqualifies the appellant, as an LT-2 offender, from being considered for a MTO. Given my finding above that the present LT-2 offence does not fall within 337(1)(*ga*) of the CPC (see above at [49]), the appellant could also not avail himself of the corresponding carve-out under s 337(2)(*b*) of the CPC. As such, offenders convicted of drug consumption offences carrying mandatory minimum sentences such as the LT- 2 offence in the present case are not eligible for a MTO. The court is barred under s 337(1) of the CPC from imposing a MTO, and thus there can be no question that the court is also precluded from calling for a MTO suitability report. Issue 1 was thus answered in the negative: the appellant would not be eligible for a MTO as a matter of law.

63 Before turning to address Issue 2, I pause to make some observations regarding the availability of MTOs for LT-1 offences bearing in mind the interpretation of s 337(2)(*b*) of the CPC that I have adopted above. Insofar as the DJ had suggested (at [32] of the GD) that s 337(2)(*b*) of the CPC could apply to the appellant at the time of his LT-1 conviction as his conviction was premised on a prior DRC admission, this is incorrect. The MDA prescribes a *mandatory minimum* sentence of five years' imprisonment and three strokes of the cane for LT-1 offences. The appellant would be *prima facie* excluded under s 337(1)(*b*)(ii) of the CPC from any community order. As I had found above that s 337(2)(*b*) of the CPC is a carve-out of only s 337(1)(*ga*) of the CPC, it would not operate as a carve-out of any other subsection in s 337(1) of the CPC,

particularly where there is a mandatory minimum sentence in the case of an offender convicted of an LT-1 offence.

64 The same reasoning would also apply to an offender who is convicted of an enhanced consumption offence pursuant to s 8(*b*) read with s 33(4) of the MDA, since a mandatory minimum sentence of imprisonment of three years' imprisonment is prescribed upon conviction. Accordingly, the DJ's observation (GD at [32]) that the appellant would have been eligible for a MTO at the time of his LT-1 conviction because this was based on his prior admission to a DRC was erroneous. The parties were in agreement that the DJ's reasoning was not a principled interpretation of s 337(2)(*b*) of the CPC in any event.

Issue 2: Whether the DJ should have called for a MTO suitability report

65 Having concluded that the court is precluded from imposing a MTO in relation to LT-2 offenders such as the appellant, that would have been sufficient to dispose of this appeal. For completeness, I set out my reasons below as to why the DJ was justified in declining to call for a MTO suitability report on the facts of the present case.

66 The general principles governing when a MTO suitability report should be called are set out in my earlier decision in *GCX* at [47] as follows:

> [I]n considering whether to call for an MTO suitability report, the court should bear in mind the following. The court should identify and balance the relevant sentencing principles, giving each its appropriate weight. Having done so, the court would have some sense of the offender's rehabilitative potential. The threshold to be met as to the offender's rehabilitative potential before an MTO suitability report would be called for should not be overly restrictive. The court would need to be persuaded that rehabilitation was a real prospect, and that the other sentencing principles were not so dominant that rehabilitation should be rejected out of hand. This threshold incorporated the principle identified in [59(g)] of *Kong Peng Yee*, which recognised

> that other sentencing principles might so substantially trump the principle of rehabilitation that it was unnecessary to inquire further into the offender's rehabilitative potential. The determination whether the threshold was met, and correspondingly, whether the scenario contemplated in principle (g) of *Kong Peng Yee* applied, was intensely fact-dependent. The court should bear in mind, however, that it should not lightly find that other sentencing principles so substantially trumped the principle of rehabilitation that there was simply no need to call for the MTO suitability report. This caution was warranted because the court still lacked, at this stage, the necessary facts to apprise itself fully of the offender's true rehabilitative potential.

67 The purpose of a MTO suitability report is to "help the court to better appreciate the appellant's true rehabilitative potential, if any exists": *GCX* at [61].

68 The appellant submitted that a MTO suitability report should have been called so that the court could better appreciate the appellant's true rehabilitative potential. Three primary arguments were advanced in support.

69 First, there was a contributory link between the appellant's mental illness and the offence.[11] While the appellant accepted that the DJ may have been right to find that there was no contributory link between the drug induced psychosis and the commission of the LT-2 offence, the DJ erred in not considering how Stimulant Use Disorder played a part in his commission of the offence.[12] The 1st IMH Report[13] at para 16(a) suggested that the Stimulant Use Disorder also had some part to play in contributing not only to the commission of the offence of committing mischief by fire under s 435 of the PC, but also the LT-2 offence. General deterrence may have a lesser role to play where the

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11 WSA at paras 41–42.

12 WSA at paras 41–42.

13 ROA at p 98.

offender has a mental illness before and during the commission of an offence: *GCX* at [53].

70 Second, the appellant had long-standing struggles with mental illness.[14] The DJ found that the appellant's six admissions to IMH between 2011 to 2012 were indications that "the accused is a long-term hardcore drug addict, having been a drug abuser since 2000, in addition to being an alcoholic" (GD at [53]). This ignored the effect that the appellant's Stimulant Use Disorder had on him. Denying the appellant the possibility of obtaining a MTO suitability report would prevent the court from understanding the underlying conditions which caused him to commit the LT-2 offence.

71 Third, the DJ failed to account for the appellant's progress since May 2020 which gave insights into his rehabilitative potential.[15] The DJ failed to take note of the fact that the appellant had been gainfully employed and had stayed away from crime and drugs for a period of more than two years.

72 I will refer to the above points as the appellant's "first", "second" and "third" points, respectively. I also noted that the Prosecution did not respond to these arguments on Issue 2 in either its written or oral submissions, opting instead to rest its case on its submission that the court was precluded from imposing a MTO on account of the appellant's LT-2 offence for which there is a mandatory minimum sentence.

73 In my view, none of the above points raised by the appellant showed that the DJ had erred in declining to call for a MTO suitability report.

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14 WSA at para 46.

15 WSA at para 47.

74 The appellant's first and second points can be addressed together since they relate to the contributory link between the appellant's mental illness and the offence. To begin with, the appellant's submissions below had wrongly stated that Dr Stephen Phang had found a "causal link" between the appellant's mental illness and the offences.[16] Instead, it was clear on the face of the 1st IMH Report that it was prepared by Dr Lucas Lim, who had made no such statement that any "causal link" was found, but only that his "mental illness had contributed to his alleged offence" of mischief by fire.

75 I noted that the DJ's judgment appeared to have focused only on the question of whether the appellant's *drug induced psychosis* had a contributory link to the offence. The DJ's critical finding (GD at [56]) was that "the two IMH reports in the present case did not show that the [appellant] was suffering from any mental illness *when he committed the LT-2 offence*, let alone the fact that there was any contributory link to the LT-2 offence" [emphasis added]. The DJ pointed out that Dr Lucas Lim's opinion at para 16(a) of the 1st IMH report stated that the appellant's mental illness was caused by the taking of drugs and not the other way around (GD at [57]). The relevant excerpt from the 1st IMH report which formed the basis for the DJ's decision is reproduced below:

> The accused has *Drug Induced Psychosis*, which can be conceptualized as a psychotic disorder *caused by recreational drugs*, characterized by hallucinations, delusions and disorganized behaviour, He was also likely intoxicated with Methamphetamine at and around the time of the alleged offence, as he had consumed it in the morning prior to the purported act. He has a *background of Stimulant Use Disorder* (Methamphetamine), which is conceptualized as a problematic pattern of stimulant use, in spite of knowing the deleterious consequence of such a habit. His mental illness had contributed to the alleged offence, as he demonstrated clear disorganization of his behaviour and marked paranoid delusions around the time of the alleged offence.

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16 ROA (Plea in Mitigation) at p 85 para 11; p 91 para 31.

[emphasis added]

76 The appellant contended that the DJ failed to consider that the appellant's background of Stimulant Use Disorder could also have contributed to his offending. The appellant pointed to the Court of Appeal's decision in *Roszaidi bin Osman v Public Prosecutor* [2023] 1 SLR 222 ("*Roszaidi*") (at [81] of the majority judgment) having left open the question of whether Substance Use Disorder ("SUD") qualified as an abnormality of mind. As such, it was therefore arguable that Stimulant Use Disorder should also qualify as a mental illness relevant for consideration under the *GCX* framework.

77 The Prosecution did not respond to these arguments in its oral submissions. Nevertheless, it appeared to me that the appellant had glossed over the full context in which the majority of the Court of Appeal in *Roszaidi* ("the majority") had made its observations at [81]. To be clear, the majority did *not* leave open the question of whether SUD qualified as an abnormality of mind. Rather, on the facts in *Roszaidi*, it was undisputed that the offender had suffered from major depressive disorder *as well as* SUD. The majority's observations related specifically to whether a stand-alone diagnosis of SUD could satisfy the second limb of the three-limb test for abnormality of mind laid down in *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216. As outlined by the majority at [2] in *Roszaidi*, the second limb required the court to be satisfied that the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent causes; or (iii) was induced by disease or injury.

78 I assumed, in the absence of any contrary argument from the Prosecution, that SUD can be equated with Stimulant Use Disorder in the present case. Pertinently, *Roszaidi* was distinguishable from the present context.

The majority was not concerned with the offender's rehabilitative prospects or whether any such disorder arising from substance or stimulant abuse was a treatable condition amenable to a MTO. Instead, the majority was directing its mind to the question of whether the offender possessed the requisite *mens rea*, and whether he could avail himself of the defence of diminished responsibility. In short, the appellant's argument conflated the question of an offender's eligibility for a MTO (based on a treatable underlying disorder) with the question of the offender's *mens rea*. In any event, it appeared to be a stretch of logic to assert that by virtue of the majority having left open the question of whether SUD or Stimulant Use Disorder qualified as an abnormality of mind, this would lead to the conclusion that the same would necessarily qualify as a mental illness relevant in the MTO inquiry.

79 While the DJ did not make any express finding on the appellant's Stimulant Use Disorder, the DJ's broad reasoning as stated above (at [75]) remained sound. The 1st IMH Report did not show that the appellant was suffering from any mental illness in relation to his commission of the LT-2 offence. All that the 1st IMH Report noted was the appellant's "background" of Stimulant Use Disorder, with no further details such as precisely when this background was ascertained or any other substantiation. This "background" presumably referred to 2011 to 2012 when his six prior admissions to IMH took place. As the DJ correctly observed, the conclusions in the 1st IMH Report related only to the offence of causing mischief by fire, as this report was obtained specifically for this offence which formed the subject matter of the TIC charge (GD at [47]). It did not relate to the LT-2 drug consumption charge, which was the focal point of this appeal.

80 Similarly, the 2nd IMH Report dated 16 September 2021 did not demonstrate any contributory link as well. It only repeated what was already

stated in the 1st IMH Report *ie*, that the appellant had six prior admissions to IMH between 2011 to 2012 and that he was diagnosed then with "Drug Induced Psychosis on a background of Stimulant Use Disorder".[17] While I noted the appellant's argument at the hearing that *Roszaidi* (at [160] and [178]) considered that an offender's long history of drug abuse could be relevant to understanding the impact of a mental illness on an offender's mental state, this ultimately did not take the appellant very far. The enquiry is ultimately highly fact-sensitive. An offender's IMH history alone could not be sufficient without more to establish a contributory link between the offender's mental illness and his offence.

81 I found it exceedingly difficult to accept the appellant's argument based on his six prior IMH admissions which presumably gave rise to his "background" of Stimulant Use Disorder. Dr Lucas Lim's observation bears repeating, namely, that Stimulant Use Disorder is conceptualised as "a problematic pattern of stimulant use, in spite of knowing the deleterious consequence of such a habit". Crucially, as the DJ rightly noted (GD at [57]), the appellant was found to be suffering from such a mental condition "precisely because he deliberately consumed drugs". The LT-2 offence was thus not *caused by* an existing mental condition. This is borne out by the 1st IMH Report which clearly *attributes* the appellant's mental illness to his repeated drug use but nonetheless concludes that the mental illness had contributed to his alleged offence (*ie*, mischief by fire under s 435 of the PC).

82 I should also state that I was unable to comprehend how a recalcitrant drug offender's culpability for consuming drugs might somehow be lessened simply because he has been diagnosed to have severe drug addiction and drug

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17 ROA at p 104.

dependency. With respect, this is entirely counter-intuitive, particularly where the offender in question has previous drug-related court convictions and antecedents. It is also wholly at odds with the policy intent of the MDA's enhanced punishment regimes for hard-core drug users.

83 On the appellant's third point, I noted from the GD that the DJ did not appear to have taken into account the appellant's gainful employment since his arrest on 18 May 2020. Nonetheless, I agreed with the following findings by the DJ on why little weight should be given to events which post-dated the appellant's recent arrest (GD at [44]):

> Although the accused has been regular for his appointments at **[**National Addictions Management Service**]**, I noted that these appointments only commenced after the accused was charged with the present drug consumption offence. There is nothing to show that the accused sought help for his drug addiction after he was released from prison. *It would appear that the accused saw no need to "rehabilitate" himself until he was caught for consuming drugs.* Further, there is also nothing before the court to show the (*sic*) how the accused had progressed since then and the fact that the accused has kept his appointments at NAMS does not automatically indicate that his rehabilitation was a real prospect.
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> [emphasis added]

84 The DJ held that the appellant's lack of rehabilitative potential was borne out by the appellant's long history with drugs which began more than 20 years ago (GD at [41]–[43]). While the appellant raised the additional facts of his recent gainful employment and his abstention from crime and drugs for a period of more than two years since his arrest on 18 May 2020, it was difficult to fault the DJ's conclusion that "[i]t would appear that the [appellant] saw no need to "rehabilitate" himself until he was caught for consuming drugs". These additional facts did not outweigh the appellant's substantial history with drugs spanning over 20 years.

85 Accordingly, I agreed with the DJ's conclusion (GD at [45]) that the appellant's "[long] association with drugs did not speak well of his rehabilitative potential". The DJ was entitled to find that rehabilitation would not trump deterrence and prevention in the circumstances.

Conclusion

86 The appellant was sentenced to the mandatory minimum sentence for the LT-2 offence. There were no grounds for any reduction of his sentence.

87 For the reasons set out above, the appeal was dismissed. To sum up, I affirmed the DJ's findings that the appellant was not eligible for a MTO as a matter of law and that a MTO suitability report should not be called for in the circumstances.

See Kee Oon
Judge of the High Court

Suang Wijaya (Eugene Thuraisingam LLP) for the appellant;
Thiagesh Sukumaran & Ong Xin Jie (Attorney-General's Chambers)
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