

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 47

Youth Court Appeal No 3 of 2023/01

Between

GFN

... Appellant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing – Sentencing – Young offenders]

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GFN
v
Public Prosecutor

[2023] SGHCF 47

General Division of the High Court (Family Division) — Youth Court Appeal
No 3 of 2023/01

Choo Han Teck J

2 November 2023

6 November 2023

Choo Han Teck J:

1 The appellant will be 17 years old next month. He is appealing against a sentence of 24 months detention in a Juvenile Rehabilitation Centre (“JRC”). The sentence was imposed by a District Court judge (“the DJ”) on 7 March 2023 after the appellant was assessed to be unsuitable for probation. The sentence was made after the appellant pleaded guilty to four charges with six other charges taken into consideration for sentencing.

2 Mr Ashvin Hariharan (“Mr Ashvin”), counsel for the appellant, is not challenging the detention order, but he submits that the DJ gave an excessively long term of detention. He submits that the DJ placed undue weight on a flawed probation report and a flawed psychiatric report. He therefore submits that I should order a supplementary probation report, and a supplementary psychiatric report, and thereafter consider a shorter detention term.

3 Mr Ashvin submits that the probation report is flawed because the probation officer had taken maternity leave midway through her investigation when her supervisor took over and completed the report. I should say at once that this alone is no evidence of any flaw. The officer signing the report assumes full responsibility for the accuracy of the report. Only if the report is proven to be inaccurate can it be said to be flawed. There is one obvious typographical error though. At page 15, it is reported that the appellant first consumed alcohol in 2003. He was born in 2006. This is an obvious typographical error. Some typographical errors may be egregious, some are merely embarrassing. In this case, even if the date should be 2023 at the latest, the appellant would still have been an underaged drinker.

4 Mr Ashvin further submits that the probation report is flawed because it provided no reasons for its conclusion and recommendation that the appellant reside in the JRC for 24 months. Mr Ashvin argues that under the “Recommendation” portion of the summary page, no reasons are given to support the probation officer’s recommendation. I do not accept Mr Ashvin’s submission. As he himself has observed, the probation officer’s recommendation is found in the summary page of the report, but the summary page does not constitute the entire report. Read in full, it is clear that the probation officer’s recommendation is based on her assessment of the appellant’s “Risk factors” and “Strengths/Protective factors”, that are in turn based on a consideration of many other pieces of information relating to the appellant, such as:

- (a) The circumstances surrounding the current offences;
- (b) his history of conflict with the law;
- (c) his family background;

- (d) his history of social and psychological services;
- (e) his education;
- (f) his employment;
- (g) his peers and activities;
- (h) his substance use;
- (i) his risky behaviours; and
- (j) his attitudes and orientation.

5 The report is 21 pages long mainly because of the many instances of the appellant's misbehaviour and criminal conduct. The offences for which he pleaded guilty to, included threatening to kill his 12-year-old sister with a knife, causing hurt to her by strangulation, threatening a public servant, (these offences occurred on 6 November 2022), and causing hurt to his mother on 20 October 2021. All four offences are serious ones, but he had another six taken into account. Having read the report, I am of the view that the probation report is comprehensive.

6 Mr Ashvin's next argument is that the probation report is flawed because it relied on the report of Dr Tan Da-Vid, a psychiatrist with the Institute of Mental Health ("IMH"). Counsel's complaint is that Dr Tan's report sets out his opinions and recommendations "without giving reasons". The DJ had focused on Dr Tan's conclusions and formed the view that, "although the IMH psychiatrist had opined that the [appellant] had ADHD [Attention Deficit Hyperactivity Disorder] as well as Conduct Disorder, the IMH psychiatrist also stated that there is no contributory link between his conditions and his alleged offences". As such, the DJ took the view that the appellant's "ADHD and/or

Conduct Disorder did not make probation a more suitable option for him”. Mr Ashvin argues that the DJ should have rejected the IMH report for its flaws.

7 The IMH report is a medical report stating the mental state of the patient. In this report, Dr Tan stated what he had taken into consideration when he formed his opinion that although the appellant suffers from ADHD, he is not of unsound mind at the material time of the offences. He had interviewed the appellant and his father, considered the observations of the Youth Guidance officers and the report of the investigating officer, and had an interview with the Head of Department for Student Development of the appellant’s school. The result of his inquiries led him to his diagnosis. I see nothing wrong with the methodology or the way his report was written.

8 Finally, I listened to the appellant’s father who made an impassioned speech that he finds his son a changed person after the few weeks that he had been in the JRC (7 to 28 November 2022) before he was released on bail. This plea, sincere as it sounded, is incongruous with the events after the appellant was sentenced on 7 March 2023 and released on bail. He “reoffended” on 15 July and 17 July 2023 while on bail. Mr Ashvin objected to the prosecution’s reference to these offences because the appellant had been charged but not yet convicted of the offences. Counsel referred to *PP v Low Ji Qing* [2019] 5 SLR 769 (“*Low Ji Qing*”) at [40] for the proposition that fresh charges should not be taken into account for the sentencing of previous convictions. I agree and accept *Low Ji Qing*. But that was not a case in which a probation order was in contemplation (I am mindful that adult offenders may also qualify for probation). In the present case, the question that Mr Ashvin raised was whether a fresh probation report is necessary because the current one is inadequate.

9 Let me first emphasise that I am of the view that this present report is comprehensive and adequate. I am also of the view that even without the probation report, the facts of the offences on which the appellant was convicted, taken together with the other six, were sufficient to warrant a sentence of 24 months detention in a JRC. The probation report reinforced the DJ's decision. But let me now return to Mr Ashvin's call for a fresh report. If I were to agree, the probation officer has to investigate the circumstances up-to-date, and that means she has to inquire into the incidents that occurred on 15 and 17 July 2023 — precisely the matters Mr Ashvin tells me to ignore when they were brought up by the learned DPP, Ms Emily Koh.

10 There is a difference between considering fresh charges after the fact for the purposes of sentencing the previous convictions, and noting incidents that led to police action. Neither the probation officer nor this court need to consider what new charges the appellant is facing, but we would be remiss if we were to ignore incidents that had occurred after his release that may be relevant to the suitability of probation. It will not be a matter of merely correcting a typographical error — counsel would have shot himself in the foot had a new probation report been called. It is possible, as counsel argued, that a new report might lead to a shorter term of detention. I doubt it. Given the circumstances, the appellant may, more likely, receive a longer term.

11 For the above reasons, this appeal is dismissed.

- Sgd -
Choo Han Teck
Judge of the High Court

Ashvin Hariharan (I.R.B. Law LLP) for the Appellant;
Emily Koh and Gail Wong (Attorney-General's Chambers) for the
Respondent.