IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 150

Magistrate's Appeal No 9309 of 2017

Between

Ahmad Syafiq Bin Azmi

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [sentencing] — [young offenders]

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Introduction

1 This is an appeal against a sentence of reformative training ("RT") in respect of a charge of rioting punishable under s 147 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code") ("the charge"). The charge reads as follows:

> You … are charged that you on 1 April 2017 at or around 3am, at Mandai Tekong Park, off Woodlands Drive 50, Singapore 731887, together with Khairulnizam Khan Bin Kamalrozaman, Siti Marliana Bte Saadon, Muhammad Fazli Bin Sabtu, Ahmad Darwis Bin Azman, Nurul Amirah Salha Bte Ibrahim and Muhammad Rasul Bin Abdullah, were members of an unlawful assembly whose common object was to cause hurt to Muhammad Firdaus Alimmuddin Bin Abdul Hadi, and in the prosecution of the common object of such assembly, one or more of you had used violence, *to wit*, by punching and kicking the said Muhammad Firdaus Alimmuddin Bin Abdul Hadi, and you have thereby committed an offence punishable under section 147 of the Penal Code (Cap, 224, 2008 Rev Ed).

2 The appellant pleaded guilty to the charge in the District Court, and consented to another rioting charge punishable under s 147 of the Penal Code ("TIC rioting charge") and one charge of being a member of an unlawful society under s 14(3) of the Societies Act (Cap 311, 2014 Rev Ed) to be taken into consideration for the purpose of sentencing. The appellant was 20 years old at the time of the commission of the offence in the charge and at the time of conviction. The District Judge imposed a sentence of RT after considering the RT suitability report ("the RT report") on the appellant.

3 Having heard submissions from both parties, I allow the appellant's appeal against sentence.

Facts

4 The appellant and six accomplices, aged between 19 and 23 years old at the material time, were jointly charged for rioting. According to the Statement of Facts which the appellant had admitted to without qualification, the riot was triggered by a prior dispute between one Muhammad Firdaus Alimmuddin bin Abdul Hadi ("the Victim") and one Siti Marliana bte Saadon ("Siti"). The Victim and Siti were previously in a relationship and Siti had helped to sign up for a handphone line on the Victim's behalf. She had given him the SIM card and was going to give him the new handphone set, but one Khairulnizam Khan bin Kamalrozaman ("Khairulnizam"), Siti's boyfriend, was unhappy with the arrangement and told her not to go through with it. Siti thereafter contacted the Victim to get the SIM card back from him. The Victim refused to return the SIM card and told her that he had thrown it away. The Victim also threatened Siti via a WhatsApp message by asking her if she had ever felt a weapon at her neck.

5 Siti informed Khairulnizam about the Victim's threat and refusal to return the SIM card. Khairulnizam and the Victim then exchanged some text

messages, with the latter remaining adamant about not returning the SIM card. Khairulnizam thereafter informed the appellant and the other accomplices of this matter and sought their assistance to accompany him to confront the Victim. Sometime in the late evening of 31 March 2017, they met up to discuss the matter.

6 Subsequently, at about 3.00am on 1 April 2017, the appellant and the accomplices (collectively referred to as "the group") approached the Victim and his friends who were playing soccer at Mandai Tekong Park. Khairulnizam identified himself as Siti's boyfriend and asked for the Victim. The Victim stepped forward and identified himself, whereupon the appellant punched him. Khairulnizam and the other accomplices joined in to kick and punch the Victim as well as the victim in the TIC rioting charge.

7 When the group stopped the assault, Khairulnizam flung a knife onto the ground and challenged the Victim to pick up the knife to cut him (Khairulnizam) since this was what the Victim had threatened Siti with. The Victim did not do so but cried out in pain instead. The group then attacked the Victim again. Thereafter, the Victim managed to flee from the scene; he continued running until he came across a passer-by and sought his help to call the police.

8 The Victim went to Khoo Teck Puat Hospital ("KTPH") on 5 April 2017, a few days after the incident. The medical report from KTPH stated that the Victim complained of left-sided ear pain for five days with headache. It was also stated that the Victim had "subconjunctival haemorrhage on the right, slight erythema over [the] left external meatus and some mastoid tenderness". He was given three days of medical leave. The victim in the TIC rioting charge suffered "contusion secondary assault" according to his medical report.

The proceedings below

The parties' arguments below

9 The Prosecution urged the court to call for the RT report in view of the seriousness of the offences and the fact that the appellant was a member of a secret society. Moreover, the appellant had been previously sentenced to two months' imprisonment for desertion by failing to report for duty with intent to remain permanently absent without leave while serving his National Service in the Singapore Civil Defence Force ("SCDF"), an offence punishable under s 24 of the Civil Defence Act (Cap 42, 2001 Rev Ed) ("the Civil Defence Act"). This stint in prison did not serve to deter him from committing the present offences. Additionally, the appellant was the one who threw the first punch at the Victim.

10 In mitigation, the appellant pleaded for leniency, pointing out that he had gotten married recently and was supporting his five-month old daughter who was born after his commission of the offences. After the RT report was furnished, the appellant in his written mitigation pleaded for an imprisonment term instead of RT because an imprisonment term would be shorter in length than the minimum term of RT. He pleaded that he had since realised his mistake and was remorseful for the offence. He asked for a shorter custodial term so that he could be there for his five-month old daughter. His mother also pleaded for leniency on his behalf. In her written mitigation, she highlighted that the appellant was married with a young child who shared a close relationship with him, and that his wife was young and dependent on him emotionally and financially. She reported that she observed the appellant to have shown great remorse for his mistakes during her visits to him during his remand. She pleaded for a second chance to be given to him.

11 In reply, the Prosecution reiterated its submissions for the appellant to be sentenced to RT in view of the fact that he was still young and rehabilitation remained the dominant sentencing consideration.

The decision below

12 The grounds of decision of the District Judge is reported at *Public Prosecutor v Ahmad Syafiq Bin Azmi* [2017] SGDC 277 ("the GD"). The District Judge was of the opinion that the offences committed were serious – the offence of rioting carries mandatory imprisonment of up to seven years as well as discretionary caning, while the offence of being a member of an unlawful society carries a fine of up to $5,000 or imprisonment of up to three years or both (at [12] of the GD). On the other hand, she was cognisant that rehabilitation was generally the dominant sentencing consideration for a young offender (at [13] of the GD). In the circumstances, the District Judge opined that the crux of the case was whether the appellant ought to be sentenced to RT or to imprisonment (at [14] of the GD). She considered case law on the appropriate balance between deterrence and rehabilitation to be struck when sentencing a young offender, such as *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR 449 ("*Al-Ansari*"), *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") and *Muhammad Zuhairie Adely Bin Zulkifli v Public Prosecutor* [2016] SGHC 134 ("*Muhammad Zuhairie*"). If rehabilitation was eclipsed by deterrence, a sentence of imprisonment would be more appropriate.

13 The District Judge analysed the seriousness of the offences and the culpability of the appellant (at [21]–[24] of the GD). She opined that the offences committed were undeniably serious. As for culpability, the appellant had committed the offences at the behest of Khairulnizam but was the first to

throw a punch at the Victim. There was pre-planning by the appellant and his accomplices, and there was no attempt from any of them to resolve the matter peaceably prior to the attack. Moreover, after Khairulnizam flung his knife onto the ground and taunted the Victim, they assaulted the Victim a second time, and only stopped after the Victim managed to flee from the scene. In addition, the appellant was an active participant rather than a bystander. There were two victims involved in the incident and the injuries sustained were not minor.

14 The other factors that the District Judge took into account were, on one hand, the appellant's antecedent under the Civil Defence Act, his poor decision-making skills in choosing to help Khairulnizam and his use of senseless violence in the commission of the offences, and on the other, his supportive relationship with his family, his remorse, and his good performance in the SCDF after serving his sentence for the Civil Defence Act offence (at [25]–[30] of the GD). The District Judge was of the opinion that the appellant still had good rehabilitative potential; the offences were not so heinous and he was not devoid of any realistic prospect of being reformed which necessitated a custodial sentence to be imposed (at [30]–[32] of the GD).

15 The District Judge therefore concluded that RT was the appropriate sentence to achieve the right balance between rehabilitation and deterrence (at [33] of the GD). The structured environment in RT was suitable for the appellant because his previous imprisonment term did not deter him from reoffending. She decided that the principle of proportionality was not infringed in the present case because it legitimately takes a back seat in the context of RT as RT seeks to reform young offenders by making them go through programmes stipulated for a minimum of 18 months. In any event, she opined that the likely imprisonment term would have been at least 15 months' imprisonment, which was not disproportionately shorter than the length of RT (at [34] and [35] of the

GD). In deciding the sentence, the District Judge placed little weight on any resulting hardship to the appellant's family (at [37] of the GD).

The parties' arguments on appeal

The appellant's submissions

16 The appellant, who was unrepresented both in the proceedings below and on appeal, submitted that a probation suitability report should have been called for. He submitted that the parity principle was breached because all his accomplices, including Khairulnizam, were placed on probation. He emphasised that the disparity was especially stark because Khairulnizam was the one who had sought his help in confronting the Victim, had planned the confrontation and had armed himself with a knife. The appellant also argued that the injuries to the two victims were caused by all the accomplices and him collectively and not by him alone. Moreover, he submitted that too much weight had been placed on his dissimilar antecedent. He also argued that the length of RT was disproportionate to the likely duration of an imprisonment term taking into account the remission period. Lastly, he submitted that he had mended his ways and was determined to stay out of trouble for his family's sake.

The respondent's submissions

17 The Prosecution submitted that the District Judge's decision to sentence the appellant to RT was unimpeachable, given that there was an equal need for deterrence and rehabilitation.

18 It was argued that there was a need for deterrence because the circumstances of the commission of the offences were aggravating. It was a group attack and there was pre-planning involved. There was no attempt to settle the matter amicably at all as seen from the immediate punch thrown by the

appellant upon the Victim identifying himself. Moreover, the group assaulted the Victim twice – after Khairulnizam flung the knife on the ground and taunted him, the group proceeded to attack him a second time. The Victim was clearly outnumbered and had to endure the kicks and punches from seven assailants before he managed to flee. The Prosecution submitted that it was a prolonged and humiliating assault. In addition, it was submitted that the injuries sustained were not minor, and they were concentrated on the Victim's head and face, which are vulnerable parts of the body. There were also two victims assaulted in the same incident, and the second victim also sustained injuries to his face and head. In these circumstances, the Prosecution submitted that there was a need for general deterrence to deter like-minded young offenders.

19 In relation to the appellant's parity argument, the Prosecution submitted that the appellant was one of the more culpable members of the group – he was an active participant and was also the one who threw the first punch that sparked off the violence. Moreover, unlike the accomplices, the appellant was not a first-time offender; although his previous offence was of a different nature, it showed that his stint in prison just about a year prior to the incident clearly did not deter him from reoffending. Thus, specific deterrence was important to deter him from further offending.

20 Considering that significant weight had to be placed on general and specific deterrence, the Prosecution argued that the District Judge was justified in sentencing the appellant to RT without having called for a probation suitability report, because the deterrent effect of probation was modest in nature compared to RT. The Prosecution also pointed out that the appellant did not bring up probation at all during the proceedings in the court below, and only first submitted for probation in his petition of appeal. The Prosecution also submitted that an imprisonment sentence was not appropriate because the high

threshold set out in *Al-Ansari* for rehabilitation to be displaced by deterrence was not crossed. Even though deterrence was needed, it did not displace rehabilitation as the primary sentencing consideration, in the light of the appellant's remorse, the birth of his daughter which provided him with the motivation to change his ways, and the successful completion of his National Service duties after his incarceration. Furthermore, the Prosecution argued that since he had committed the present offences barely a year after his release from prison, an imprisonment stint would be unlikely to be particularly effective in reforming him.

21 Therefore, according to the Prosecution, the sentence of RT was correct. The Prosecution emphasised that RT would afford the appellant a structured environment and targeted programmes to ensure that he would not reoffend. Such intervention was necessary because of his risk factors as stated in the RT report, namely his association with antisocial peers, his lack of assertive skill in rejecting his friend's request and his inability to manage his anger. The Prosecution also submitted that the principle of proportionality was not breached, since proportionality in the context of RT was attenuated by the overriding imperative of the appellant's reform. In any case, the likely imprisonment sentence of 15 months' imprisonment was not disproportionately shorter than the RT term. It was also submitted that any potential for remission should not be factored in when considering the proportionality between the lengths of RT and the likely imprisonment sentence because remission was not guaranteed.

My decision

22 The present appeal calls into question what is the appropriate sentence in all the circumstances, considering that the appellant was under the age of 21 when he committed the offences and when he was convicted.

Sentencing considerations for young offenders

23 The framework for sentencing young offenders is clear. It involves two stages. The first is a threshold question of whether rehabilitation retains its primacy in the sentencing matrix (*Al-Ansari* at [61]; *Boaz Koh* at [34]). The dominant sentencing consideration in the sentencing of offenders below 21 years of age is that of rehabilitation (*Al-Ansari* at [31]). Nevertheless, if the offence is so heinous and the young offender so devoid of any realistic prospect of being reformed, then deterrence is the dominant consideration, and the statutorily prescribed punishment (probably imprisonment) for the offender would be the obvious choice (*Al-Ansari* at [61]). An example of such a case is *Public Prosecutor v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 ("*Mohamed Noh Hafiz*"). The accused in that case, a 17-year-old male, pleaded guilty to ten charges. He had followed young girls into lifts of public housing estates as they were heading home alone. When they emerged from the lift, he attacked them from behind, covered their mouths and pulled them to the staircase landings where he molested them. He faced four charges of aggravated outrage of modesty. He was also charged for two rape offences and three unnatural sex charges as well as a robbery charge pertaining to a mobile phone he took forcibly from a girl's pocket when he accosted her. The accused also consented to having 19 other charges taken into consideration in sentencing, namely nine charges of aggravated outrage of modesty, one charge of unnatural sex, four charges of robbery, three charges of theft and two charges under the Films Act (Cap 107, 1998 Rev Ed). He was sentenced to 20 years' imprisonment and 24 strokes of the cane in spite of his young age, because the principle of

rehabilitation was no longer the foremost consideration, given the heinousness of the offences and the accused's culpability.

24 In the circumstances of the present case, I agree with the District Judge and both parties that rehabilitation is not eclipsed by deterrence. The District Judge correctly observed that the offence is not so heinous and the appellant not so devoid of any realistic prospect of being reformed that deterrence must form the dominant consideration and imprisonment must be imposed.

25 Where rehabilitation remains the foremost sentencing consideration, the second stage of the sentencing inquiry requires balancing rehabilitation with deterrence, and determining what is the most suitable sentence to give effect to this balance, which is generally a choice between probation or RT (*Al-Ansari* at [61] and [66]). Where greater deterrence is warranted, RT is a more appropriate sentence than probation because the deterrent effect of RT is greater. RT incorporates a significant element of deterrence as there is a minimum incarceration period of 18 months in a closed and structured environment (*Boaz Koh* at [38]). The court in *Al-Ansari* has listed relevant factors to be considered (at [67]) in determining the balance to be struck between the dominant consideration of rehabilitation and the need for deterrence, to determine the appropriate sentence:

(a) the seriousness of the offence;

(b) the culpability of the offender;

(c) the existence of antecedents;

(d) the nature of the rehabilitation best suited for the offender;

(e) the availability of familial support in the rehabilitative efforts; and

(f) any other special reasons or need for rehabilitation.

26 These factors are not exhaustive and it would be necessary for the court to consider all the relevant facts and circumstances in achieving the right balance between deterrence and rehabilitation. One of the key considerations would be the rehabilitative potential of the young offender (*Muhammad Zuhairie* at [30]). The seriousness of the offence, while an important factor, is only one of the factors to be considered in the assessment of the balance between rehabilitation and deterrence. Thus, with respect, the District Judge erred in disregarding the option of probation entirely and focusing solely on the severity of the offences in the present case.

Probation as a sentencing option

Calling for a pre-sentencing report on suitability for probation

27 After considering the severity of the offences, the appellant's culpability, his antecedent and weighing these factors against his potential for reform and familial support, I was of the view that probation ought not to have been ruled out as a sentencing option, even though probation had not been expressly sought by the appellant in the proceedings below. I therefore exercised my discretion at the hearing on 30 January 2018 to call for a pre-sentence report to determine his suitability for probation ("the probation report"). This would allow the court to have a more complete and accurate assessment of the appellant's background, character and attitude, and would assist the court in determining the most appropriate sentencing outcome.

28 In calling for the probation report, I did not disagree with the District Judge that the offence of rioting under s 147 of the Penal Code is serious. It carries with it mandatory imprisonment of up to seven years as well as

discretionary caning. As noted in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at p 377, even where the level of violence is minimal for a s 147 offence, a sentence of 15 months' imprisonment has been meted out (*eg*, *Robin Anak Mawang v Public Prosecutor* [2006] 1 SLR(R) 373 where the offender kicked the victim once). This shows that the offence under s 147 of the Penal Code is serious, and offenders can generally expect to be punished with a substantial period of imprisonment.

29 I was and remain of the opinion that the culpability of the appellant is moderate in the present case. The group attacked the Victim twice, and only stopped after the Victim managed to run away. His culpability is on the same level as Khairulnizam (if not lower than Khairulnizam's) but higher than that of the other accomplices. The appellant was no doubt the one who threw the first punch at the Victim. However, it was Khairulnizam who instigated and organised the confrontation against the Victim, because Khairulnizam was unhappy about the fact that the Victim had refused to return the SIM card and had threatened his girlfriend Siti. Khairulnizam sought the assistance of the appellant and the other accomplices, and met them before the confrontation to discuss the matter. Moreover, Khairulnizam brought a knife with him to the confrontation. The appellant denied knowing that Khairulnizam brought a knife with him to the confrontation, and there was no evidence to show otherwise.

30 Notably, although the appellant was still in contact with his secret society gang members at the material time of the incident, there was no evidence to suggest that the attack involved any secret society elements or was a gang-related attack. Notwithstanding the fact that the appellant was the one who threw the first punch, the group had gathered with the intent to confront the Victim collectively and had a common object to cause hurt. All of the offenders bore equal responsibility in hurting the Victim, since there was no evidence of

precisely what each offender did during the assault. The injuries caused to the Victim had to be attributed to all of them.

31 The appellant had one antecedent for an offence of desertion under s 24 of the Civil Defence Act, and was sentenced to two months' imprisonment on 18 February 2016. However, this offence was of a different nature from the present set of offences. With respect to familial support, there was a *prima facie* show of support by the appellant's mother in tendering the plea for leniency in the court below (see [10] *supra*). The RT report itself indicated that the appellant made constructive use of his leisure time and did not have anti-social traits or criminal attitudes. He was assessed to hold conventional values. In these circumstances, it was not clear that RT was the sole sentencing option or the most viable sentence.

Suitability of probation

32 In the event, probation was recommended for the appellant in the probation report, and I find the additional information in the probation report useful in shedding light on the appellant's background, history of offending, the degree of familial support and his rehabilitative potential. I shall set out the salient points from the probation report which I find to be relevant.

33 The probation report disclosed that the appellant had committed the offence under the Civil Defence Act because he was depressed at that point in time. This is corroborated by his psychiatric assessment records – he reported having low mood, poor appetite with weight loss, poor sleep, constant worries, low energy levels, a loss of interest in his usual activities and occasional passive suicidal thoughts for a duration of 2 months during the period from August 2015 to January 2016, and was prescribed anti-depressant medication by a psychiatrist from the Institute of Mental Health. He had also received

counselling. After his release from prison, he completed his National Service dutifully. According to the probation report, he was assessed by his SCDF Commander Major Yap Tzyy Kae to have performed and conducted himself well after serving his sentence, to have demonstrated good operational efficiency and to be able to support his supervisors and teammates.

34 Before his enlistment for National Service, the appellant had previously been placed on the Guidance Programme from 5 June 2013 to 4 March 2014. During this programme, he was issued three warning letters for being absent without valid reasons and breaching of time curfew. Ultimately, he completed the programme successfully in early 2014. Evidence from the appellant, the probation report and the RT report all show that he receives strong support from his family. His parents hope for him to be placed on probation and stated that they would step up their supervision over him by monitoring his peers and activities more closely. They are also willing to sign the probation bond and to work on their parenting skills. His mother opined that the birth of his daughter had changed his mindset and attitude and he became responsive and receptive towards her advice thereafter. The appellant shares a close relationship with his wife and she also reported that she noticed a positive change in his behaviour since the birth of their daughter – he became more caring and responsible towards them. His wife is a good influence on him, and sternly warned him against meeting Khairulnizam (which led to the occurrence of the current offences).

35 The appellant, together with his wife and daughter, currently lives with his mother. His stepfather, whom he also lives with, is a policeman who advises him not to get into further trouble and to cease association with negative peers. His biological father lives in Johor Bahru, but they meet regularly and he disciplined the appellant when necessary. However, he does not seem to be very

involved in the appellant's life since he was reportedly unaware of his son's activities and peers. The appellant's daughter, who is currently one year old, is one protective factor against his reoffending. The appellant reported that after her birth in April 2017, he spent most of his time with his wife and child. Another protective factor is his ability to be gainfully employed. He was employed as a packer from October 2017 to April 2018, and his supervisor, Mr Muhammad Shafiq, reported that he was a diligent worker with regular attendance. The appellant reported that his supervisor had wanted to promote him but could not do so because of his current offences. He got along well with his colleagues and supervisor. He reported that he would have meals with his colleagues once a fortnight, and that they were a positive influence as they often encouraged him to steer clear of crime. The appellant also indicated that he intends to take vocational courses after April 2018.

36 A third and major protective factor is that the appellant has cut off contact with his anti-social peers. He reported that he had joined the "Sio Kun Tong" gang in late 2013 out of peer pressure but he left the gang in March 2017. There is no indication of any continuing or lingering gang associations. He admitted that his accomplices were a negative influence as they had gang affiliations, and reported that he has ceased contact with all of them except for one Darwis since April 2017. He felt that Darwis had also changed his lifestyle and they often advised each other. As set out in the RT report, his account suggested that he was closer to his SCDF colleagues than his anti-social peers, and that he had spent most of his leisure time with his colleagues prior to the birth of his child. After the birth of his child, he spent less time with them but still considered some of them as close friends.

37 Besides these protective factors, the appellant also exhibits a promising level of rehabilitative potential. First, he was able to complete his National

Service successfully after his release from incarceration. He reported that his imprisonment changed his perception towards National Service, so he managed to serve his duties uneventfully afterwards. This demonstrates his ability to change his mindset and exert a measure of self-control. He also seems to have gleaned insight into his behaviour and to be able to recognise his mistakes. With regard to the Guidance Programme, he admitted that his initial attitude towards it was poor. As for the current offences, he expressed regret for his actions, felt sorry for his victims, and was willing to apologise to them. The RT report further shows that he has a promising level of rehabilitative potential. As I have noted earlier (at [31] above), it states that he does not have any anti-social traits and his behaviours do not present with any anti-social patterns. Based on his lifestyle in the one year prior to his remand (for the purpose of preparing the RT report), "he was assessed to hold conventional values. This was evident from his satisfactory performance and willingness to work[,] his positive relationships with his wife and other family members, close association with prosocial civil defence colleagues and his constructive leisure pursuit". It also states that he does not present with criminal attitudes, but he has a lack of assertive skill in rejecting his friend's request which led to the present offences. Lastly, the appellant will be turning 22 years of age this year, and is likely to be mature enough to understand the importance of rehabilitation and to exercise better self-discipline. He is willing to be supervised and to abide by the probation conditions.

38 Based on the appellant's account and both the RT and probation reports, he has started making changes to his lifestyle since April 2017 by ceasing contact with his friends whom he considers to be bad influences and by spending more time with his wife and child. This happened very soon after the commission of the offences, and months before he was charged for the offences in September 2017. This gels with his submission and the accounts of his mother

and wife suggesting that the birth of his child in April 2017 was indeed a turning point which motivated him to change his ways. This is not a case where an accused person was incentivised to put up a self-serving favourable front after being charged, for the purpose of getting a lighter sentence. His reported ability to cut off contact with his anti-social peers also shows that he has taken positive steps towards working on his assertive skills in the face of peer pressure.

39 On the other hand, one factor which may reflect the appellant's lack of rehabilitative potential is his reoffending only about a year after his prison stint for the offence under the Civil Defence Act. Although this antecedent is unrelated to the present offences, it is nonetheless fairly recent, and the fact that the appellant reoffended within a year or so suggests that he had not fully appreciated the consequences of breaking the law. Nevertheless, this must be assessed in the light of the cogent protective factors, his willingness to make amends, and his moderate culpability in the commission of the offences. He had spent three weeks in remand while the RTC report was prepared. It is also pertinent to consider the issue of parity among the co-offenders, all of whom were placed on probation. I disagree with the Prosecution's submission that the appellant should be treated differently from the co-offenders on the basis of his antecedent, as his antecedent is unrelated. Therefore, I do not ascribe substantial weight to his antecedent. While it remains a valid differentiating consideration, it is not a pivotal aggravating factor that displaces the viability of probation as a sentencing option.

Conclusion

40 The circumstances pertaining to the offence and the offender have to be carefully scrutinised in the delicate balancing exercise between deterrence and rehabilitation in determining the appropriate sentence for a young offender. In

the present case, the balance leans in favour of rehabilitation. In the present circumstances, I am of the view that this is best achieved through probation within a community-based environment.

41 For the above reasons therefore, the appeal is allowed. The appellant, having indicated his consent to being placed on probation, is ordered to undergo 21 months' split probation (comprising 6 months of intensive probation and 15 months of supervised probation) with the probation conditions as set out in the probation report.

See Kee Oon
Judge

The appellant in person;
Stephanie Koh (Attorney-General's Chambers) for the respondent.