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

**[2017] SGHC 324**

Magistrate's Appeal No 9199 of 2017

Between

Praveen s/o Krishnan

… *Appellant*

And

Public Prosecutor

… *Respondent*

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# JUDGMENT

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[Criminal Procedure and Sentencing] — [Sentencing] — [Forms of punishment]

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29 December 2017 Judgment reserved.

**Steven Chong JA:**

## Introduction

1 This is an appeal by Praveen s/o Krishnan ("the appellant") against the sentence of reformative training imposed by the district court. The appellant pleaded guilty to two charges in the proceedings below – one for consumption of a specified drug and the other for possession of a controlled drug for the purpose of trafficking. A third charge for possession of a controlled drug for the purpose of trafficking was taken into consideration for sentencing. The appellant was 17 years old at the time of the offences.

2 Notwithstanding the fact that these offences attract considerations of general as well as specific deterrence in sentencing, probation is not invariably ruled out for young offenders. This is borne out by a number of cases in which young offenders like the appellant were sentenced to probation instead of

reformative training for such offences. This was duly acknowledged by the court below.[1] Ultimately, whether a young offender should be sentenced to probation as opposed to reformative training must necessarily depend on the particular facts of each case.

3 In considering whether probation would be an appropriate sentence for young offenders, the sentencing court is typically assisted by probation officers whose assessment provides valuable insight into the suitability of such offenders for probation. In the present case, the District Judge below had initially called for both probation and reformative training suitability reports, and the appellant was found suitable for both types of sentences. The Prosecution thereafter brought *additional* materials to the attention of the probation officer which led to three supplementary probation reports being produced, of which all but the last maintained the recommendation that the appellant remained suitable for probation.

4 This case is therefore unusual in that, of the four probation reports produced, three of them had recommended the appellant for probation. The District Judge relied on the last supplementary probation report and sentenced the appellant to reformative training instead. The central inquiry in this appeal calls for a close examination of the reasons which caused the probation officer to change her recommendations in the final report, and of whether that change should have had a material bearing on the relevant sentencing considerations which eventually led to the District Judge's imposition of reformative training.

5 In the course of the inquiry, this judgment will also examine the role of probation officers and probation reports in the sentencing of young offenders.

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[1] *Public Prosecutor v Praveen s/o Krishnan* [2017] SGDC 190 at [11]

Although there is no question that they play a vital function in the sentencing process, it is ultimately the sentencing judge who must decide on the *appropriate* sentence for the particular offender, based not only on all the relevant materials before the court, including the probation reports, but also (and always) with reference to the applicable sentencing principles.

**Background facts**

6 The appellant is currently a third-year student at Ngee Ann Polytechnic pursuing a Diploma in Chemical and Biomolecular Engineering. On 8 March 2016 at about 5.20am, the appellant was placed under arrest after a search of his haversack by police officers revealed several packets of vegetable matter, which were believed to be controlled drugs. After his arrest, the appellant provided two urine samples which were subsequently analysed and found to contain 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid ("THC"), a cannabinol derivative, which is a specified drug listed in the Fourth Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The appellant admitted to consuming cannabis the day before his arrest, which gave rise to the presence of THC in his urine samples. He further admitted to having consumed cannabis regularly from around December 2015, three months prior to his arrest. The packets of vegetable matter in the appellant's haversack were also analysed and found to contain not less than 41.19 grams of cannabis mixture, a "Class A" controlled drug listed in the First Schedule to the MDA. During the course of investigations, the appellant admitted that he had purchased cannabis from a supplier, known to him as "Blurry", and sold them to others in smaller packets in order to earn money for his overseas holiday.

7 On 1 March 2017, the appellant pleaded guilty to two charges, one for the possession of cannabis mixture for the purpose of trafficking, an offence

under s 5(1)(*a*) read with s 5(2) of the MDA and one for consumption of THC, an offence under s 8(*b*)(ii) of the MDA. An additional charge of possession of cannabis for the purpose of trafficking was taken into consideration for sentencing.

## The proceedings below

### *The pre-sentencing reports*

8 As alluded to in the introduction of this judgment, the present case is unusual in that a total of four probation reports were prepared in the course of the sentencing proceedings. The first three probation reports consistently assessed the appellant to be suitable for probation. The first report even suggested that the appellant could be rehabilitated through probation in a home setting, while the second and third reports recommended that the appellant serve a portion of his probation through residence at a hostel. In the last probation report however, the probation officer changed her recommendation and took the position that the appellant was *no longer suitable* for probation. Given this turn of events, it is critical to scrutinise the chronology of events leading to the generation of each of the three supplementary probation reports; in particular, a careful examination of the reasons which caused the probation officer to change her recommendations in the last report is required.

9 On 27 March 2017, after considering letters from the appellant's school and from the Singapore Indian Development Association ("SINDA"), which spoke positively of the appellant's capacity for reform, the District Judge called for pre-sentencing reports to determine the appellant's suitability for both probation and reformative training.[2]

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[2] ROP p 37

10 On 17 April 2017, both pre-sentencing reports were tendered in court. In this first probation report, the probation officer indicated that the appellant was suitable for probation. A 30-month split probation (six months intensive, 24 months supervised) was recommended.[3] The reformative training report, which was prepared by a Correctional Rehabilitation Specialist of the Singapore Prison Services, also assessed the appellant to be physically and mentally fit, and hence suitable, for reformative training.[4]

11 At that hearing, counsel for the appellant, Ms Chong Yi Mei ("Ms Chong"), submitted that the appellant had never sold drugs prior to his arrest.[5] However, the District Judge pointed out that according to the Statement of Facts, the appellant had purchased drugs from Blurry on *two occasions* and would sell the drugs to others in smaller packets for profit. This suggested that the appellant had not only intended to sell the drugs which were found on him at the time of the arrest, but had done so previously.[6] The District Judge therefore asked Ms Chong to clarify whether the appellant had in fact previously sold the drugs that he bought from Blurry. According to Ms Chong, her instructions at the time were that the appellant had *never* sold drugs prior to his arrest. On the first occasion when he purchased drugs from Blurry, the drugs were simply for his own consumption. It was only on the second occasion that he had ordered a larger amount for the purpose of trafficking; this formed the subject of one of the existing charges against him. Ms Chong further indicated that, notwithstanding the probation officer's recommendation for probation in a home setting, the appellant was willing to admit himself to a hostel stay to

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3 ROP p 282 para 7.1 (first probation report)

4 ROP p 259

5 ROP p 41

6 ROP p 41

achieve an added level of deterrence. The Prosecution, on the other hand, stated that it wished to ask the probation officer some questions on the first probation report. The District Judge therefore adjourned the matter for the probation officer to be questioned at the next hearing.[7] It appears that the adjournment was also granted for the probation officer to produce a supplementary report to determine the appellant's suitability for hostel residence as part of his probation conditions and to assess whether there was a need for stricter conditions to be imposed.[8]

12 On 5 May 2017, a further probation report, which I shall refer to as the first supplementary probation report, was produced. The probation officer did not change her assessment; the appellant was found to remain suitable for probation. A 36-month split probation (18 months intensive, 18 months supervised) was recommended, and the conditions for probation included a 12-month residence at the Singapore Boys' Hostel.[9] Two further developments, however, prompted an adjournment for yet another probation report to be prepared. First, during the hearing, the District Judge expressed concerns about the appellant's suitability for probation. This was in the light of "new information" provided by the Prosecution that it might not be the appellant's first time trafficking drugs.[10] The issue appeared to have been raised during an earlier hearing in chambers, during which the Prosecution revealed that the appellant had, in his statement to the police on 8 March 2016, confessed that he had sold three grams of cannabis to his friend, Bryant, for $50 about a month prior to his arrest. This was contrary to the account which the appellant had

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7 ROP pp 41–43

8 ROP p 285 para 1.1 (first supplementary probation report)

9 ROP p 290 para 7.1 (first supplementary probation report)

10 ROP p 44

provided during interviews with the probation officer. At that time, the appellant claimed that he had *never* engaged in any act of trafficking prior to his arrest for the present offences.[11] The second development was that, according to the probation officer, there appeared to be "ongoing drug offences" occurring within the Singapore Boys' Hostel. In that light, the probation officer sought an adjournment to assess whether another hostel, Hope House, would be more suitable for the appellant.[12] In view of the two issues raised, the District Judge called for a further supplementary report to be prepared, to re-assess if the appellant was still suitable for probation.[13] I shall refer to this as the second supplementary probation report.

13 On 22 May 2017, the second supplementary probation report was tendered to the court. The probation officer had stated in the report that when asked about the statement he gave to the police on 8 March 2016, the appellant maintained that he had not engaged in the sale of drugs prior to his arrest.[14] He reported that he had consumed cannabis a few hours before his arrest and was feeling "high". He was also disoriented and fearful about the consequences of his arrest and thus provided an untrue statement to the police that he had previously sold cannabis to Bryant. The probation officer opined that the appellant's inconsistent statements cast doubt on his level of integrity during investigations.[15] In other words, by this time, the probation officer had already entertained doubts about the appellant's account of his past trafficking activities. Nonetheless, her assessment remained that the appellant was suitable for

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11 ROP p 293 para 1.2; Respondent's submissions pp 7–8; ROP p 247

12 ROP p 293

13 ROP p 44–45, p 55, p 293 para 1.2 and p 294 para 2.3

14 ROP p 294

15 ROP p 298 (second supplementary probation report)

community-based rehabilitation in a hostel setting. The probation officer recommended 36 months' split probation (18 months intensive, 18 months supervised) with hostel residence at Hope House for 12 months.[16]

14 During the hearing, the probation officer was questioned by the learned Deputy Public Prosecutor, Mr Andrew Tan ("Mr Tan"), as to whether the assessment of the appellant's suitability for probation would be impacted if it were established that he had engaged in the sale of drugs *prior* to his arrest. The probation officer conceded that if that were the case, the appellant's suitability for probation would have to be re-assessed.[17] At the end of the hearing, the parties sought an adjournment to decide on whether to proceed with a Newton hearing, ostensibly on the issue of whether the appellant had sold drugs to Bryant prior to his arrest.[18] The District Judge adjourned the matter accordingly.

15 At the adjourned hearing on 1 June 2017, Mr Tan informed the court that parties were in agreement that prior to the appellant's arrest, he had in fact sold three grams of cannabis to Bryant for $50. This was confirmed by a statement procured from Bryant. Mr Tan asserted that the latest development proved that there was a "clear contradiction"[19] between this and the version that the appellant had related to the probation officer; Mr Tan therefore asked that a further supplementary report be prepared to assess whether probation remained suitable, on the basis that it was incumbent on the probation officer to assess the appellant's suitability for probation on these "objective facts".[20]

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16 ROP p 294 para 2.3, p 298 para 7.1, p 298 para 8.1 (second supplementary probation report)

17 ROP p 53

18 ROP pp 58–59

19 ROP p 61

20 ROP pp 60–61

16 Ms Chong, however, maintained that the appellant had never sold drugs to Bryant. Rather, the appellant had simply acted as an intermediary between the supplier and Bryant, in the sense that he collected money from Bryant in order to obtain drugs from the supplier on Bryant's behalf.[21] There was thus no inconsistency with what he had previously informed the probation officer.[22] In light of this development, the probation officer indicated that she would need to prepare a third supplementary probation report in order to re-assess the appellant's suitability for probation, after re-evaluating the appellant's level of involvement in the offences, his integrity and his degree of genuine remorse.[23] The District Judge adjourned the hearing to allow for the preparation of a third supplementary probation report.

17 On 22 June 2017, the third supplementary probation report was tendered in court. In that report, the probation officer stated that she had interviewed the appellant in relation to his sale and purchase of drugs. The appellant maintained that his statement to the police about his sale of three grams of cannabis to Bryant for $50 was false. The appellant, however, confessed that between December 2015 and March 2016, he had established contact with a total of five suppliers on 15 occasions to purchase cannabis.[24] He added that he had initially withheld details about his various suppliers from the police and the probation officer during investigations as he feared for his own safety should he be asked to reveal the identities and whereabouts of these suppliers.[25] He also gave further details about his drug purchases and the persons with whom he smoked

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21 ROP p 62

22 ROP pp 61–62

23 ROP pp 64–65

24 ROP p 303 (third supplementary probation report)

25 ROP pp 303–304 paras 2.3–2.4 (third supplementary probation report)

cannabis. When the appellant's parents were questioned, they admitted that they were unaware of the circumstances of his involvement with various suppliers and abusers. His mother opined that the appellant could have been pressured by his peers to meet with multiple suppliers and abusers, and that the stress of investigations might have taken a toll on his ability to provide thorough and accurate information to the police and the probation officer. His father considered that the appellant might not have been forthcoming about his involvement initially as he was afraid that revealing the extent of his involvement with drugs might reduce his chances of being placed on probation and consequently affect his ability to continue with his studies at Ngee Ann Polytechnic.[26]

18 At the end of the third supplementary probation report, the probation officer assessed the appellant to be *no longer suitable* for probation. There were two main reasons for her change in recommendation. First, she stated that the appellant's lack of candour in initially withholding the full extent of his drug-related activities demonstrated a palpable lack of remorse and "inadequate insight" into the severity of his offences.[27] This was compounded by his mother's "permissive attitudes" towards his offences and his behaviour during the investigations. Second, the extent of his involvement and contacts in the local drugs scene (including his drug suppliers and associates) revealed a "high propensity for risk-taking" and his continued stay in the community might increase his risk of re-offending.[28]

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26 ROP p 307 paras 5.1–5.2 (third supplementary probation report)

27 ROP p 308 (third supplementary probation report)

28 ROP p 308 paras 6.1–6.5 (third supplementary probation report)

***The parties' submissions and the decision below***

19 After the third and last supplementary probation report was tendered, Ms Chong maintained that the appellant ought to be sentenced to probation. She highlighted that reformative training would have a "devastating effect" on him because he would be taken out of his polytechnic course just as he was about to graduate. She submitted that the appellant did not withhold information, but in fact *volunteered* information about his suppliers when asked by the probation officer. Mr Tan, on the other hand, asked that reformative training be imposed on the appellant. He highlighted that the offences committed by the appellant were extremely serious, and deterrence was warranted. He stressed that the appellant was less than forthcoming about his drug activities, and only came clean upon being confronted with Bryant's statement by the probation officer.[29]

20 After hearing the parties, the District Judge relied on the third supplementary probation report and sentenced the appellant to reformative training instead of probation. Her decision is reported at *Public Prosecutor v Praveen s/o Krishnan* [2017] SGDC 190 ("the GD"). In the GD, the District Judge first examined the sentencing considerations in relation to a young offender. In the context of drug trafficking offences, which were serious crimes, the District Judge noted that the courts were generally not disposed towards the rehabilitation of such offenders unless the individual offender's capacity for rehabilitation was "demonstrably high" (at [14] of the GD).

21 The District Judge then applied the following factors in *Leon Russel Francis v Public Prosecutor* [2014] 4 SLR 651 ("*Leon Russel Francis*") to determine the appropriate sentence:

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[29] ROP pp 85-87, 302–304; Prosecution's submissions paras 9(e), (f) and 10

(a) In terms of *familial support*, there were serious doubts as to the ability of the appellant's parents to effectively supervise him during probation. Although his parents have shown strong support for him and became more proactive in their supervision since his arrest, they remained unaware of the true extent of his involvement with drugs. This suggested that they had not engaged in conversations with the appellant about his drug history and did not consider such information to be relevant to his rehabilitation. Critically, the appellant's mother demonstrated "'permissive' attitudes" toward the appellant's drug offences and appeared only to agree to hostel residence for the appellant so that he could "avoid serving a period in [the Reformative Training Centre ("RTC")]". The appellant's mother also appeared to downplay his culpability by attributing his offending conduct to peer pressure and his lack of candour during investigations to stress (at [25]–[28] of the GD).

(b) In terms of the *frequency and intensity of the appellant's drug-related activities*, it was clear that the appellant had escalated in his offending behaviour, from consuming drugs on a regular basis to trafficking drugs as a money-making enterprise. The appellant's frequent drug consumption had also resulted in poor motor co-ordination. Had he not been arrested, his continual drug consumption would invariably have led to more serious health consequences, and possibly erode relational and familial ties in the long term (at [30]–[31] of the GD).

(c) In terms of the appellant's *remorse*, the District Judge expressed doubt as to the appellant's genuine remorse toward the commission of his offences as well as his real desire to rehabilitate and be free of all

drug activities and associations. Given that the appellant had provided inconsistent versions of events and omitted critical information regarding his involvement in drugs, the District Judge found that the appellant's lack of candour in providing "piecemeal information" about his drug habits cast doubt on his integrity and demonstrated that he lacked adequate insight into the severity of his offences, which could be a hindrance to his effective rehabilitation in a community setting (at [32]–[34] of the GD).

(d) In terms of *risk factors*, although the appellant claimed to have ceased contact with his negative peers, the District Judge took into account the probation officer's concerns that, given his multiple contacts with the local drug scene, his continued stay in the community might increase his risk of re-offending (at [36] of the GD).

22 In the premises, the District Judge found that the circumstances were not so exceptional as to warrant the imposition of a probation order. There was nothing compelling or remarkable in the surrounding circumstances of the case in mitigation to justify an overriding focus on the accused's rehabilitation over the need for general and specific deterrence (at [37] of the GD). She therefore sentenced the appellant to reformative training.

**The appeal against sentence**

23 Dissatisfied with the sentence imposed, the appellant filed an appeal. His key arguments are as follows:

(a) The District Judge was wrong to place little weight on the appellant's strong family support and wrongly concluded that the

appellant's mother had an "overall permissive and overprotective" attitude towards him;

(b) The District Judge was wrong to conclude that the appellant's past involvement in drugs had a bearing on his rehabilitative prospects;

(c) The District Judge was wrong to be doubtful of the appellant's genuine remorse towards the commission of the serious drug offences;

(d) The District Judge failed to consider the reasons why the appellant did not disclose all the information when he could have done so earlier;

(e) The District Judge was wrong to conclude that the appellant was at risk of coming into contact with his contacts in the drug scene; and

(f) The District Judge had failed to consider the other sentencing precedents cited by the Defence.

24 The appellant also cites a host of factors to show that his capacity for reform is demonstrably high, and argues that the imposition of reformative training is manifestly excessive in light of the existing precedents.

## My decision

### *Sentencing principles for young offenders who commit serious offences*

25 In sentencing a young offender, the court must approach the task in two distinct but related stages. At the first stage, the court has to identify and prioritise the primary sentencing considerations appropriate to the particular offender in question, having regard to all the relevant circumstances including those surrounding the offence. This will set the parameters for the second stage

of the inquiry, where the court must select the most appropriate sentence that would best meet those sentencing considerations: see *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [28]. I will go through the two stages in turn and then examine some of the sentencing precedents to consider how the courts have dealt with offenders in circumstances similar to those of the appellant.

*The sentencing considerations*

26 In sentencing a young offender who has committed a serious crime, the tension between the sentencing considerations of rehabilitation (due to young age) and deterrence (because of the severity of the offence) is a real one: see *Leon Russel Francis* at [13]. Broadly speaking, it requires a balance to be struck between the *public interest* and the *interests of the offender*. On the one hand, the court needs to safeguard the well-being of the public, for example by bearing in mind the risk of re-offending by the accused during the period of probation. It must also have due regard to the need to impose a sanction that adequately reflects society's opprobrium of the criminal conduct in question. On the other hand, the court must also take into account the individual needs of the young offender and the likelihood of him being rehabilitated into a useful member of society: see *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Mok Ping Wuen Maurice*") at [25] and *Luo Zhiwei v Public Prosecutor* [2001] SGDC 399 at [23].

27 It cannot seriously be disputed that the *dominant* sentencing consideration in the sentencing of young offenders is that of *rehabilitation*. In the oft-cited passage in *Mok Ping Wuen Maurice*, Yong Pung How CJ expresses this in the following terms (at [21]):

> Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young "don't know any better" and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour. …

28 However, when a young offender is convicted of a *serious offence*, the principle of rehabilitation may be outweighed by other considerations such as the need for general and specific deterrence and even retribution: *Leon Russel Francis* at [13] and *Public Prosecutor v Justin Heng Zheng Hao* [2012] SGDC 219 ("*Justin Heng*") at [13]. Such offences include serious sexual crimes (see *Public Prosecutor v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281), crimes involving violence, robbery, rioting and drug offences, in particular, those which relate to trafficking (*Justin Heng* at [13] and [26]).

29 Nonetheless, this should not be the end of the inquiry. In considering whether rehabilitation retains its primacy in the sentencing matrix, the court should consider whether the particular offender's *capacity for rehabilitation* is demonstrably high, so that it outweighs the public policy concerns that are traditionally understood as militating against probation (*Justin Heng* at [13] and [15], cited in *Leon Russel Francis* at [14]). In this regard, the main objective of rehabilitating young offenders is to wean them off a life-time career in crime and to reform them into "self-reliant and useful citizens": see *Public Prosecutor v Muhammad Nuzaihan bin Kamal Luddin* [1999] 3 SLR(R) 653 at [16]. It aims to strengthen the offender's resources so that he may become "a more responsible member of the community": see the UK Report of the Department Committee on the Probation Service (Cmnd 1650, 1962) at para 13, cited in

*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Mohammad Al-Ansari*") at [55]. Thus, the ultimate question is whether there are conditions conducive to the appellant turning away from his erstwhile ways and leading a productive life in the future.

30 In determining the young offender's capacity for rehabilitation and the appropriate sentence, the following considerations set out in *Leon Russel Francis* at [15] are relevant:

(a) the strength of familial support and the degree of supervision provided by the offender's family for his rehabilitation;

(b) the frequency and intensity of the offender's drug-related activities;

(c) the genuineness of remorse demonstrated by the offender; and

(d) the presence of risk factors such as negative peers or bad habits.

*The sentencing options: probation vs reformative training*

31 If rehabilitation retains its primacy in the sentencing matrix, the court should then turn to the second stage of the sentencing framework and determine the sentencing option that best gives effect to the need for rehabilitation. In respect of young offenders such as the appellant, the court is generally presented with a choice between *probation* and *reformative training*. Each represents a different fulcrum in the balance between rehabilitation and deterrence: see *Mohammad Al-Ansari* at [78]. Probation places rehabilitation at the front and centre of the court's deliberation. Its primary object is the swift reintegration of the offender back into society and it provides support to assist him in avoiding the commission of further offences: *Boaz Koh* at [35].

32 Probation is especially beneficial to the rehabilitation of young offenders for two reasons. First, it does not stand as a criminal conviction on record: see s 11(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("the POA"). Second, young offenders are more likely to be in school, higher institutions of learning or at early stages of their employment. Placing them on probation allows them to continue with their education or employment which will give them the opportunity to turn over a new leaf and become a responsible member of society: see *Singapore Parliamentary Debates, Official Report* (10 November 1993) vol 61 at cols 931–932 (Mr Yeo Cheow Tong, Minister for Community Development) ("Parliamentary Debates"). Although the need for deterrence is also a pertinent sentencing consideration where the young offender has committed serious offences, there is nothing in the case law or the statutes that indicates that the possibility of probation should be ruled out altogether: see *Lim Pei Ni Charissa v Public Prosecutor* [2006] 4 SLR(R) 31 at [16]. In this regard, probation can and has been granted even where the accused has committed serious crimes, such as drug trafficking. I will return to the relevant cases on this in the next section of this judgment.

33 On the other hand, the goal of reformative training, while also geared towards rehabilitation, incorporates a significant element of deterrence because there is a minimum incarceration period of 18 months, which is not a feature of probation. Reformative training envisages a rehabilitative programme under a much more structured environment in the RTC: see *Boaz Koh* at [36] and [38].

34 In my assessment, probation with the additional condition of hostel residence of a specified duration strikes a good balance between rehabilitation and deterrence in circumstances where rehabilitation remains the dominant sentencing consideration, but where it is also necessary to temporarily remove the offender from an undesirable social environment or to tightly monitor him.

The structured environment and the extent of supervision in the hostel serves as a deterrent to would-be offenders generally and to the particular offender specifically. At the same time, there is a higher chance that the offender would reintegrate into society more easily because he is allowed to continue participating in his productive daily activities (such as school or work) without the blemish of having a permanent criminal record.

35 I should add that I am cognisant of the observations of Sundaresh Menon CJ in *Boaz Koh* (at [64]) that the court should not *ordinarily* subvert the statutory scheme of institutional confinement devised by the state (*ie*, reformative training) by creating alternative schemes that impose terms of probation conditioned on residence in private homes. In particular, offenders should not be placed in a position where he would be able to pick and choose the terms on which he would like to be rehabilitated. I do not disagree with this statement of general principle. But at the end of the day, the sentence to be imposed depends on the precise facts and circumstances of each case. As was highlighted in *Justin Heng* at [26], there must be room in the exercise of sentencing discretion for a more nuanced or "textured and measured" approach based on the potential of the offender to be amenable to reform. I do not consider that Menon CJ's remarks in *Boaz Koh* were intended to impinge on the discretion of the court to make a probation order conditional upon the offender's residence in an approved institution. This can be done if the court, having regard to the circumstances of the case, considers such an order necessary for securing the good conduct of the offender or for preventing his commission of the same offence or other offences: see s 5(3)(*a*) of the POA.

*The sentencing precedents*

36 In that light, it is helpful to turn at this juncture to survey some of the sentencing precedents in which probation has been granted to young offenders who committed serious drug-related offences. These provide some guidance as to the circumstances in which the imposition of probation would be justified. In doing so, I will analyse the main features of each case through the lens of the four considerations set out in *Leon Russel Francis* (see above at [30]), which are relevant in determining a young drug offender's capacity for rehabilitation and the appropriateness of probation as a sentencing option.

37 In *Leon Russel Francis* itself, the offender, who was 21 years old at the time of his conviction, pleaded guilty to one charge of drug consumption and one count of drug possession. A further charge of drug trafficking was taken into consideration for the purposes of sentencing. The district judge had sentenced the offender to eight months' imprisonment. On appeal, the High Court substituted the sentence of imprisonment with 24 months' supervised probation. In applying the considerations relevant to determining a young drug offender's capacity for rehabilitation and the appropriate sentence, the High Court found that:

> (a) there was strong familial support for the offender's rehabilitation: both parents (although divorced) expressed willingness to supervise the offender's behaviour (at [17] and [18]);
>
> (b) although the offender had a short history of consuming and selling cannabis, which began in 2011 and ceased in October 2012 (the time of his arrest), he was a first-time offender and did not possess deep-seated criminal traits that would hinder his successful rehabilitation. The

offender also did not commit a litany of drug offences nor did he commit further offences while out on bail (at [19] and [20]);

(c) the offender acknowledged his wrongdoing and expressed regret for his actions. He had ceased all drug-related activities after his arrest, and had abided by the conditions of probation. His desire to rehabilitate and turn over a new leaf could also be seen from the testimonials given by his employers, which unanimously attested to his diligence and serious attitude toward his work (at [21] and [22]); and

(d) the offender did not appear to have any unhealthy habits or negative peers with whom he would hang out with (at [23]).

In the circumstances, the High Court considered the facts of that case to be exceptional, and that the offender had a good chance of being rehabilitated. The court thus ordered that the offender undergo 24 months' probation despite the seriousness of his offences for which he was convicted.

38 Indeed, previous district court cases in which young offenders were granted probation after having committed serious drug offences bear several similarities to the facts and analysis in *Leon Russel Francis*. I note in passing that in all of these cases, the appeals by the Prosecution against the sentence of probation imposed by the district court were *subsequently* withdrawn.

39 I begin with *Justin Heng*, in which the offender, who was 20 years old at the time of conviction, pleaded guilty to three charges relating to possession of a controlled drug, consumption of a specified drug, and possession of drugs for the purpose of trafficking. Five other drug-related charges were taken into consideration for sentencing, three of which involved having other quantities of drugs in his possession for the purpose of trafficking. Despite the seriousness of

these offences, the senior district judge considered probation to be the appropriate sentence on the facts of that case. This was because:

(a) the offender's family was supportive of rehabilitative efforts and had taken immediate initiatives to address his needs. On the offender's part, he was also amenable to their supervision (at [30]);

(b) the offender had not exhibited any ingrained delinquent traits or overt criminal proclivities, and had no previous convictions (at [28] and [30]);

(c) the offender's sincere remorse was evident in his candour and full co-operation with the authorities during investigations and proceedings (at [28]); and

(d) the offender was not a hardened criminal, but, at his young age, would be vulnerable to further negative influences from other sources if sentenced to reformative training or imprisonment (at [27]).

Furthermore, the senior district judge assessed that the offender had good potential for reform, considering the fact that his reformative training and probation reports had both found the offender to have an earnest desire and capacity to change his ways. Several members of his community, including his employers, co-workers, probation officer, church community and even his Investigating Officer expressed support for his rehabilitation. The senior district judge therefore considered this to be an exceptional case where the risk of re-offending was low and there were "good prospects" that the appellant could be successfully rehabilitated through an intensive and well-structured community-based programme. He thus sentenced the offender to probation, albeit for the maximum permissible duration of 36 months and with additional conditions that

were necessary to provide structure for his rehabilitation, impress upon him the severity of his actions, enable him to make reparation to society, and realise his potential to contribute to society as a useful citizen (at [33]–[35]).

40 Similarly, *Public Prosecutor v Ng Stephanie Tin* [2012] SGDC 274 ("*Ng Stephanie Tin*") involved a 17-year-old offender who pleaded guilty to two charges of drug trafficking. Six other drug-related charges were taken into consideration for sentencing, three of which involved further counts of drug trafficking or possession for the purposes of trafficking. At the time she was sentenced, the offender was already serving a term at the drug rehabilitation centre. The following features were present in that case:

(a) the offender's parents were committed to supporting her rehabilitation, and had made significant efforts to increase their supervision and kept in close contact with the probation officer (at [16]);

(b) although the offender had been placed on probation in 2010 for an offence under the Intoxicating Substances Act (Cap 146A, 2001 Rev Ed) and had been dabbling in hard drugs since 2008, her re-offending behaviour was said to stem from her lack of consequential thinking and weak peer refusal skills. She had otherwise not displayed any major disciplinary problems in general (at [14] and [15]);

(c) the offender intimated her remorse for her actions and the probation officer found that she had displayed improvements in her behaviour during her detention at the drug rehabilitation centre (at [6] and [16]); but

(d) the offender was assessed by the probation officer to present risks of re-offending by virtue of her past association with undesirable

peers and a lack of structure and discipline in her previous lifestyle (at [15]).

Despite the nature of the offences, the offender's antecedents and her risk of re-offending, the district judge agreed with the probation officer that a community-based rehabilitation programme, which included a 12-month hostel stay, nevertheless remained viable and would benefit the offender by inculcating in her discipline and social responsibility. This was because there were many positive and favourable aspects of the offender's significant progress in her rehabilitative efforts (at [21] and [22]). The offender was therefore sentenced to 24 months' split probation (15 months' intensive, nine months supervised) with some additional conditions (at [22]).

41 Finally, in the case of *Public Prosecutor v Wong Jia Yi* [2003] SGDC 53 ("*Wong Jia Yi*"), the offender, who was 17 years old at the time of the offences, pleaded guilty to one charge of drug trafficking and one charge of drug possession. In holding that probation was nevertheless an appropriate sentence in that case, the district judge weighed the following considerations in the balance:

(a) there was a supportive family structure in place, where the offender's parents were ready and able to undertake their responsibilities in guiding her back on the right path. The offender was also amenable to her parents' supervision (at [38]);

(b) although the offender did not counter the allegation that she was a "known trafficker", she had no previous convictions and did not exhibit any ingrained delinquent traits or overt criminal proclivities. The offences were out of character and had come about largely because of

her immaturity and ill-advised choice of companions (at [25], [36] and [37]); and

(c) the offender demonstrated genuine remorse and an earnest desire and capacity to change her ways. She made concerted efforts to reform herself. She was also forthcoming during the pre-sentence interviews and co-operated fully with the police, even to the extent of providing information as to her drug sources (at [35] and [36]).

Furthermore, in the course of submissions, it was mentioned that the offender had completely stopped associating with negative peers after her arrest and ceased her late night activities. It was also observed that, before her arrest, the offender had completed a one-year traineeship scheme in office skills and was subsequently employed as a sales assistant. After her arrest, the offender voluntarily went through counselling and enrolled herself in a diploma course in information technology. The probation officer spoke well of the offender's chances of reform. In the final analysis, the district judge considered the case to be an exceptional one as her risk of re-offending was low and there was "every prospect" that she could be successfully rehabilitated (at [39]). He thus sentenced the offender to 36 months' intensive probation, during which she was to reside at a hostel throughout.

42 The Prosecution sought to distinguish the above cases primarily on the basis that in each of them, unlike the present appeal, probation was recommended in favour of the offender. However, this distinction downplays the fact that the appellant was actually found suitable for probation in three out of the four probation reports. Therein lies the importance of examining the probation officer's reasons for the change in her recommendation, which I deal with below at [59] to [67]. It also did not escape my attention that in each of the

above cases, probation was objected to by the Prosecution notwithstanding the recommendations of the probation officers. In other words, it is accepted by the Prosecution that sentencing courts can and do depart from the recommendations of probation officers in deciding on the appropriate sentence for young offenders.

***Application to the present case***

43 With these precedents in mind, I now turn to consider the preliminary question of whether, in spite of the undisputedly serious nature of the offences of which the appellant was convicted, rehabilitation retains its primacy in the sentencing matrix. As evident from the case law, the dominant consideration is the appellant's capacity for reform and whether there are conditions favourable to helping him on the road to becoming a useful and productive member of society.

44 On my assessment of the evidence before me, the appellant has good potential for reform, thus rehabilitation should still feature prominently among the sentencing considerations. This is so for several reasons. The first relates to the positive prognosis of his academic pursuits. The appellant is in his final year at Ngee Ann Polytechnic and is about to graduate from his Diploma course. The latest letter from the appellant's course chair, Dr Akasta Sinaga ("Dr Sinaga"), dated 7 March 2017 points out that following a discussion with the appellant and his father about the appellant's academic progress, the appellant was observed to have a "good change of attitude", becoming more responsive and participating more in class. He had also completed a higher proportion of his assignments on time and his attendance had much improved. Dr Sinaga assesses that the appellant has demonstrated a "sufficient level of willingness to change" and given the opportunity and continual support from his family, the school, and

a proper social circle, the appellant should be able to turn his life around.[30] The appellant himself told the probation officer that he had made the effort to wake up earlier so as to attend class on time and to pay more attention during lessons. He also reported that he had attended classes regularly while he was out on court bail. This was assessed by the probation officer to be "indicative of his clear resolve to make positive changes in his lifestyle, *regardless of the outcome of the Court proceedings*" [emphasis added].[31] The appellant also expressed his intention to complete his Diploma course, pursue a degree in Germany to upgrade himself academically and eventually be employed in the chemical engineering industry.[32] These plans indicate a positive attitude on the appellant's part in continuing his academic pursuits in order to advance his career in engineering. This may well prove to be a key plank to his turning away from his wayward past.

45 For the avoidance of doubt, I should add that the quest for academic qualifications is merely one indicator of rehabilitative capacity. Although it usually helps that young offenders are good students as it stands them in better stead and fortifies their chances of reform (see *Justin Heng* at [16]), the issue is *not* ultimately whether the offender is academically promising. Rather, the relevant question is whether he has demonstrated a positive desire to change and whether there were conditions in his life that were conducive to helping him turn over a new leaf. In this regard, as was pointed out in *Wong Jia Yi* at [11], scholastic mediocrity or the fact that the offender is no longer in school should not be reasons *by themselves* to conclude that the offender is incapable of

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30 ROP p 143

31 ROP p 289 para 6.2 (first supplementary probation report)

32 ROP p 280 (first probation report), p 306 para 4.3 (third supplementary probation report)

rehabilitation. Other avenues, such as vocational training or employment, would also be pertinent in assessing the offender's prospect for reform.

46 The second reason for my optimistic assessment of the appellant's rehabilitative capacity is the report from his community, SINDA. The letter from Ms Renjala Balachandran of the SINDA Family Service Centre notes that the appellant has been attending counselling sessions, during which he had expressed remorse for his actions. He has also volunteered to teach guitar lessons to younger children at SINDA's youth programme.[33] These initiatives on the appellant's part illustrate that he is determined to change his ways and has channeled his energy into productive endeavours.

47 I now turn to analyse each of the four specific factors set out in *Leon Russel Francis* (see [30] above) to consider various aspects of the appellant's capacity for reform.

*Strength of familial support*

48 I first consider whether there is strong familial support for the appellant's rehabilitation. This was a common and critical theme in all the precedent cases surveyed earlier. In this regard, I note that the appellant does not come from a dysfunctional family. On the contrary, his family has been remarkably supportive of his rehabilitative efforts and has taken initiatives to increase their supervision over him. For instance, his parents have voluntarily attended counselling sessions at SINDA with him. In fact, the appellant and his father had *self-referred* for counselling at SINDA.[34] His parents were supportive and cooperative in updating the counsellors about the appellant's attitude and

[33] ROP p 144

[34] ROP p 275

behavioural pattern at home.[35] The appellant has also strengthened his relationships with his family members.[36] Further, the appellant's parents have become more proactive in regularly checking on his whereabouts, searching his belongings for drugs, and ensuring that he adhered to the court-imposed curfew while he was out on bail.[37] They expressed a willingness for the appellant to reside in a hostel for part of his probation period, and were open to attending programmes at the hostel.[38] They were also prepared to go for programmes aimed at improving their parenting skills, which, according to the probation officer, "bodes well" for the appellant's rehabilitation.[39] In my view, there can be no question as to the appellant's parents' resolve to support the appellant's rehabilitative efforts.

49 The District Judge (at [25] of the GD) expressed concern that the appellant's parents were unaware of the extent of his involvement with drugs until they were informed by the probation officer. This, according to the District Judge, suggested that the parents had not engaged in conversations with the appellant about his drug history, and therefore it appeared to her that the parents did not regard such information as relevant for his rehabilitation. I am not sure that this observation is fair to the appellant's parents. But even if this was so, this state of affairs was always known to the probation officer when she found the parents to exhibit strong familial support towards the appellant's

35 ROP p 275

36 ROP p 144

37 ROP p 218 para 1 (the appellant's parents' letter to the court), p 262 (reformative training report); p 280 (first probation report), p 289 paras 5.5–5.6 (first supplementary probation report)

38 ROP p 289 para 5.4, p 290 para 6.4 (first supplementary probation report), p 297 para 6.2 (second supplementary probation report)

39 ROP p 285 para 2.1, p 289 para 5.6, p 290 para 6.5 (first supplementary probation report)

rehabilitation. Crucially, it did not cause the probation officer to change her recommendations in the first two supplementary reports, in which she nevertheless found the appellant to be suitable for probation.

50 Further, the District Judge (at [26]–[27] of the GD) was concerned about the observations by the probation officer and the head of Hope House, Brother Colin Wee ("Brother Wee"), who both noted that the appellant's mother displayed "permissive attitudes" towards the appellant's offences.[40] For example, his mother was initially not in favour of the appellant being placed on electronic monitoring because she was afraid that there could be stigma in the way the appellant would be viewed by others. She was also originally hesitant about the appellant residing in a hostel, as she was of the view that religious education would be more effective in mitigating the appellant's risk of re-offending.[41] It appeared to the District Judge that the appellant's mother had only "reluctantly" agreed to the hostel residence so that the appellant could avoid serving reformative training instead. The District Judge was also of the view that the appellant's mother sought to minimise the appellant's culpability by opining that he had committed the drug offences due to peer pressure, and had not revealed information about his drug contacts because of the stress of investigations. The District Judge therefore expressed "serious doubts" as to whether the appellant's parents would be able to effectively supervise him while on probation given the mother's "overall permissive and overprotective attitude towards the appellant" (see [26]–[28] of the GD).

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40 ROP p 295 para 3.5 (second supplementary probation report); ROP p 308 para 6.4 (third supplementary probation report)

41 ROP p 288 para 5.2 (first supplementary probation report)

51 With respect, in my judgment, the District Judge erred in placing undue weight on these factors while downplaying the positive and favourable aspects of the offender's family support for his rehabilitation. First, the mother's *initial* concerns about electronic tagging and hostel residence were understandable. She was *subsequently* agreeable to hostel residence after the probation officer had explained to her the programmes and structure of the hostel and she was made aware of the role of hostel residence as a deterrent against re-offending. Significantly, the mother's original hesitation did not change the probation officer's recommendation that the appellant still had adequate family support and was suitable to be placed on probation. Second, I disagree that the appellant's mother had attempted to make excuses for the appellant's criminal conduct; her explanations were not so much to downplay the severity of his offences but rather appear to be her own hypotheses about the reasons for the appellant's behaviour. In fact, the appellant's father reported that he had reprimanded the appellant when he realised he had not fully disclosed the full extent of information from the outset. He said he told the appellant to be more forthcoming with the probation officer and the court, and to report all details relating to his offences.[42] Third, as explained earlier in this section, the appellant's parents have increased their supervision of the appellant since his arrest, which should inspire confidence in their ability to continue to supervise him during probation. In any event, I note that the first one-third of his probation period would be served in a hostel, which should further allay any concerns in this regard. In the meantime, the appellant's parents are amenable to attend sessions aimed at improving their parenting skills, which will likely help them acquire the appropriate disciplinary methods and effective supervisory skills necessary to properly guide the appellant on the path of rehabilitation.

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[42] ROP p 307 para 5.2 (third supplementary probation report)

*Frequency and intensity of the offender's drug-related activities*

52 The District Judge noted (at [29]–[30] of the GD) that the appellant had purchased drugs from five suppliers on 15 occasions over a four-month period, and that the appellant's criminal activity "escalated" from consuming the drug on a regular basis to trafficking drugs as a money-making enterprise. Be that as it may, I note that the appellant's drug-related activities were only limited to that four-month period. In *Leon Russel Francis*, the offender had a longer history of at least ten months (if not more) of drug-related activities, but this did not prevent probation from being granted.

53 Further, as the District Judge herself noted, the appellant was a first offender, in the sense that this was the first time he was charged in court. In *Ng Stephanie Tin*, the offender had various antecedents for offences under the Intoxicating Substances Act, but probation was nonetheless granted and there was no reason that the same sentencing option should no longer feature in the present case. Moreover, the appellant faced only two charges, with one taken into consideration for the purposes of sentencing. These were fewer than the number of charges involved in *Justin Heng* and *Ng Stephanie Tin*, where probation orders were nevertheless granted.

54 Finally, the appellant has not reoffended since his arrest and has ceased all drug-related activities. All his post-arrest urine tests were negative. He does not have deep-seated criminal traits that would hinder his successful rehabilitation, nor did he commit a litany of offences while out on bail (see *Leon Russel Francis* at [20]). The present case can thus be distinguished from *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 and *Boaz Koh*, in which the offenders reoffended while on bail and while undergoing probation respectively.

*The genuineness of remorse demonstrated by the offender*

55 I am also convinced that the appellant is genuinely remorseful. He has expressed a willingness to abide by all the conditions of probation imposed by the court, including a period of electronic tagging, regular urine tests, counselling, and a period of hostel residence.[43] He has, by and large, abided by his trial probation conditions while he was out on bail, including leaving a voice message in the probation officer's inbox every night[44] and adhering to a curfew. While he was late on three occasions in observing his curfew (mainly because he underestimated the time it would take to travel home), he has resolved to take steps to comply with his time restrictions.[45] He was also present during physical curfew checks conducted by the probation officer on several occasions.[46] The probation officer indicated that the appellant's compliance to these conditions reflected his commitment towards his goals of steering clear of drugs and ceasing his late nights out, and his ability to abide by rules.[47] I should point out that the probation officer stood by this even in the third supplementary probation report, where she was ultimately of the view that the appellant was no longer suitable for probation. In that report, she maintained that the appellant had "demonstrated the ability to … cease his negative habits and make positive changes in his lifestyle".[48] The appellant's remorse and desire to turn over a new leaf is also evident in the testimonials from his school and SINDA, as explained at [43]–[46] above.

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43 ROP p 280 (first probation report)

44 ROP p 286 para 3.1.1 (first supplementary probation report)

45 ROP p 280 (first probation report)

46 ROP p 286 para 3.1.2 (first supplementary probation report), p 295 para 4.1.2 (second supplementary probation report)

47 ROP p 289 para 6.1

48 ROP p 308 para 6.3 (third supplementary probation report)

56 In the final analysis, the point which eventually caused both the District Judge and the probation officer to reassess the appellant's genuine remorse appeared to be the appellant's alleged lack of candour in failing to provide full information about his drug habits and contacts from the outset. I return to this later in this judgment.

*The presence of risk factors*

57 As for the presence of risk factors, the appellant does not, in my view, present any significant factors that may lead to a risk of reoffending. He is not a hardened criminal, nor does he have a delinquent past. He has resolved to dissociate from the negative peers who had introduced him to drugs in the first place,[49] and reported to have ceased all his drug-related activities after his arrest. In particular, his random urine tests have all been negative.[50]

58 It appears that the appellant's lack of *full* disclosure about his drug-related activities similarly caused the probation officer to come to the view that the appellant was at a higher risk of re-offending. The District Judge also found that the presence of multiple local contacts in the drug scene meant that the appellant's continued stay in the community would increase his risk of re-offending (at [36] of the GD). I therefore turn to examine this issue.

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49 ROP pp 275–276, 279 (first probation report)

50 ROP p 286 para 3.1.3 (first supplementary probation report), p 296 para 4.1.3 (second supplementary probation report), p 305 para 3.1.3 (third supplementary probation report)

*Whether the developments in the course of the supplementary probation reports should have changed the assessment of the appellant's suitability for probation*

59 As I mentioned at [18] above, the probation officer concluded at the end of the third supplementary probation report that the appellant's lack of candour in withholding the full extent of his drug-related activities demonstrated a lack of remorse and indicated a lack of insight into the severity of his offences. In addition, it was said that the extent of his involvement and contacts in the local drugs scene (including his drug suppliers and associates) demonstrated a high propensity for risk-taking and his continued stay in the community might increase his risk of re-offending.[51] In the GD, the District Judge had, by and large, adopted the probation officer's recommendations (at [33], [34] and [36]). Given the unusual about-turn in the probation officer's recommendations after three positive probation reports, the probation officer's reasons for recasting her recommendations entirely calls for closer scrutiny. Before I proceed to do so, I should first highlight that this development has had no bearing on the strength of familial support for the appellant's rehabilitation. This has remained a constant throughout all the probation reports.

Lack of genuine remorse

60 I first consider whether the appellant's alleged lack of candour should cast doubt on the genuineness of his remorse. To do so, it is critical to examine the events leading up to the appellant's full disclosure of his drug activities. According to the probation officer, during an interview on 27 May 2017, the appellant had revealed that he had approached multiple suppliers and conducted various drug-related transactions, but the probation officer did not probe further

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[51] ROP p 308 paras 6.1–6.5 (third supplementary probation report)

as the Newton hearing was pending at the time. After the Newton hearing was averted, the probation officer asked the appellant to detail in chronological order the people that he had purchased drugs from and consumed drugs with during an interview on 3 June 2017.[52] It is not disputed that the information as to the extent of his involvement in drugs was then *voluntarily provided* by the appellant in response to the queries posed by the probation officer.[53] Indeed, prior to that occasion, he had never been explicitly asked about the extent of his dealings with other drug suppliers besides "Blurry".[54] In this regard, I do not think it is entirely accurate for the District Judge to have observed at [33] of the GD that the appellant "deliberately withheld" information about his contacts with various drug suppliers which he "only revealed" prior to the preparation of the third supplementary probation report. It does not change the fact that the appellant disclosed the information voluntarily when asked. It could well be said that the appellant never actively sought to conceal information from the probation officer. As regards the prior sale of drugs to Bryant, the appellant explained that his earlier denial was because he did not want to "get Bryant into trouble".[55]

61 In this regard, I note also that although the District Judge at [33] accepted that the appellant's reluctance to disclose the details of his drug suppliers for fear of his own safety was a "valid concern[]", she nonetheless accepted the probation officer's view that the appellant's conduct in providing "piecemeal information about his drug habits" showed a lack of insight into the severity of his offences and "could be a 'hindrance to his effective rehabilitation

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52 ROP p 69

53 ROP pp 303–304 (third supplementary probation report)

54 ROP pp 72 and 83

55 ROP p 84

in the community setting'". With respect, I fail to see how the appellant's understandable reluctance to provide such information could have a material bearing on the appellant's rehabilitative prospects moving forward.

62 Indeed, even taking the Prosecution's case at its highest and accepting that the appellant had been economical with the truth, I fail to see the nexus between the lack of candour and his apparent lack of remorse in relation to his *present* offences. During the hearing of this appeal, counsel for the appellant, Ms Chong, submitted that the assessment of remorse relates only to the offences that were the subject of the charges against the appellant. She argued that the appellant had demonstrated his remorse by admitting to his offences and pleading guilty to them. Mr Tan, on behalf of the Prosecution, took the opposite view that the assessment should not be limited to the offences themselves. He pointed me to the observations of the senior district judge in *Justin Heng* (at [28]) where it was noted that, among other things, the appellant had demonstrated his sincere remorse when he did not seek to hide the fact of his *previous involvement* in trafficking cannabis to his friends. But as I pointed out during the hearing, while the full and frank disclosure of criminal activities *beyond* the offences for which the offender is presently charged clearly goes towards showing the offender's repentance, the converse is not necessarily true. I agree with Ms Chong that the remorse is, generally speaking, offence-specific; the fact that the offender does not self-incriminate in providing details about all his past criminal conduct and associates has no material bearing on the remorse shown in relation to the offences *for which he was convicted*. It would be quite different if there was a late change of plea by the appellant after the testimony of some prosecution witnesses. Here, the appellant demonstrated genuine remorse for the offences that he had been charged with by pleading guilty at the earliest available opportunity.

Risk of re-offending

63 I move on to the risk of re-offending. Although the District Judge acknowledged that the appellant appeared to have ceased contact with his negative peers, she held that the appellant's "multiple contacts with the local drug scene" meant that his continued stay in the community "may increase his risk of re-offending" (at [36] of the GD). In my judgment, the fact that the appellant had multiple drug contacts *in the past* is not a good proxy of whether he would reoffend *in the future*. This is especially given his voluntary dissociation with his ill-chosen peers. Furthermore, there was no evidence whatsoever that in spite of his reported cessation of drug-related activities, he continued to be in touch with the local drug community, or sustained his habits and activities. I do not deny that there would always be some risk of recidivism among all offenders, including the appellant. But the question is whether the risk of the offender falling back into his old ways of life is so high that he should be effectively incarcerated to eliminate that possibility. In my view, that threshold has not been crossed in the present case. Ironically, placing the appellant in the RTC would increase his chances of being subject to negative influences therein that may be detrimental to his rehabilitation and increase his risk of re-offending (see *Justin Heng* at [27]). By contrast, I note that Hope House has no other probationers in residence; instead, most of the other residents face family issues but do not have a criminal conviction. Brother Wee has indicated further that Hope House can expend more attention on the appellant to ensure that he complies with the conditions of probation,[56] which would go some way towards improving his chances of being steered away from a life of crime.

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[56] ROP p 57

64 In light of the above, and with respect, I find that the District Judge had erred in adopting the probation officer's recommendations in the third supplementary probation report. In this connection, I make some further observations on the role of probation officers and probation reports in sentencing young offenders. A probation report is undoubtedly helpful in assisting the court to make a more informed sentencing decision. It contains important information about the offender elicited during interviews by the probation officer. These include his family and social environment, physical and mental health history, educational and employment history, and history of delinquency and crime. At the end of the report, the probation officer will indicate his or her independent and professional assessment of the offender's character and suitability for probation, as well as details of any supervision plan. This will no doubt be of substantial assistance to the court in deciding whether it would be expedient to grant a probation order, and if so, the terms of that order: see *Wong Shan Shan v Public Prosecutor* [2008] SGHC 49 at [23]; see also the Schedule to the Probation of Offenders Rules (Cap 252, R 1, 1990 Rev Ed). Indeed, the recommendations of probation officers are often accepted by the court. According to a report commissioned by the Probation and Community Rehabilitation Service of the Ministry of Social and Family Development, 640 pre-sentencing reports were called for by the courts in 2016 and 96% of the recommendations were accepted by the courts (Ministry of Social and Family Development, Probation and Community Rehabilitation Service, *Annual Report 2016* (2016) at p 10).

65 However, it is equally clear that the opinion of the probation officer is not and should not be conclusive on the issue of sentencing, nor does it bind the court to a certain decision. It would be wrong in principle for the probation officer to usurp the discretion clearly vested in the courts: see Kow Keng Siong,

*Sentencing Principles in Singapore* (Academy Publishing, 2009) at paras 28.036 and 28.037. As stated by the district judge in *Wong Jia Yi* at [12]:

> The discretion to call for pre-sentence report is vested in the sentencing judge. Having called for the report, it does not mean that the judge has made up his mind. At that preliminary stage, he does not form any provisional (let alone firm) views as to whether the offender should be placed on probation, since much depends on *his careful and considered evaluation of the probation officer's written recommendations. It may well be that even if probation is eventually recommended, the sentencing judge may yet determine that it is not appropriate to allow the offender to be placed on probation after all.*
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> [emphasis added]

Similar remarks have also been made in *Goh Lee Yin v Public Prosecutor* [2006] 1 SLR(R) 530 at [47]. One example in which the court declined to impose probation notwithstanding the probation officer's recommendation is the case of *Wu Si Yuan v Public Prosecutor* [2003] SGHC 7. In that case, Yong Pung How CJ declined (at [15]) to grant probation to the offender because there was an absence of a "strong and committed family unit" which was willing to take a leading role in the rehabilitation of the offender. He also rejected the suggestion in the probation report that probation could be served at a residential home because he was of the view that the home was not tailored towards providing the requisite level of supervision and vigilance.

66 The converse, then, must also be true: even if the probation officer does *not* consider probation to be suitable, such as in the present case, the court is not bound by such a recommendation and is free to come to an independent assessment on the matter based on the totality of the evidence before it and with reference to the applicable legal principles. An illustration may be found in the case of *Public Prosecutor v Chen Huanye* [1999] SGHC 48. In that case, Choo Han Teck JC (as he then was) noted that the probation officer expressed "trepidation" and "misgivings" about the supervision of the offender (aged

between 14 and 16 years) during probation, because of, among other things, the lack of parental supervision. Nevertheless, Choo JC also observed that the offender was not "a person of such an unruly character that imprisonment is the only way to deal with [him]" (at [2]). The offender was young and his teachers had given favourable views about him, saying that he was an obedient student. He thus gave the offender a "second chance" (at [5]) and imposed a probation of three years on him, despite the concerns expressed by the probation officer. I pause here to observe, parenthetically, that what all these decisions further demonstrate is the vital role that strong familial and community support play in deciding the suitability of an offender for probation. All things considered, the stronger the familial and community support, the higher the prospect of successful rehabilitation *via* probation.

67 Returning to the discussion at hand, I wish to be clear that I am in no way suggesting that the probation officer in the present case had been derelict in her duties; quite the contrary, I have no doubt that she was diligent, professional, comprehensive, and tried her best to present a fair and balanced assessment in each of her reports to the court. My point is simply that a probation report should only be a resource that *aids* the court's decision-making process, and not be a *substitute* for it. At the end of the day, the sentencing decision still lies within the exclusive remit of the court alone, after a careful and considered evaluation of the probation officer's recommendations.

*The effects of not imposing probation*

68 In the present case, I am additionally concerned about the adverse impact on the appellant should probation be denied. As I explained earlier, the crux of rehabilitation is the ability of the offender to reintegrate into society and to turn away from a life of crime. In the context of a young offender who has

virtually his whole life ahead of him, this is aptly summed up in the English case of *Regina v Smith* [1964] Crim LR 70 at 19, cited in *Teo Siew Peng & four ors v Public Prosecutor* [1985] 2 MLJ 125:

> In the case of a young offender there can hardly ever be any conflict between the public interest and that of the offender. ***The public have no greater interest than that he should become a good citizen. The difficult task of the Court is to determine what treatment gives the best chance of realizing that object.*** That realization is the *first and by far the most important consideration.*
>
> [emphasis added in italics and bold italics]

69 Since the court is the final arbiter in the punishment meted out to offenders, judges invariably have a considerable impact on reintegration efforts based on the sentence they impose: see Chief Justice Sundaresh Menon, "Opening Address at the Reintegration Puzzle Conference 2014" at para 13. Today, the courts are faced with a whole gamut of alternative sentencing options. One important facet of the court's duty is to choose the sentencing option that is most likely to achieve the objective of helping the offender become a good and productive citizen. This is broadly in line with the growing attention to the notion of "therapeutic jurisprudence" within juvenile justice settings, which sees judges as being key players in applying the law in a way that has "therapeutic" or beneficial consequences for the behaviour of the young offender: see, *eg*, Kelly Richards, Lorana Bartels & Jane Bolitho, "Children's Court Magistrates' Views of Restorative Justice and Therapeutic Jurisprudence Measures for Young Offenders" (2017) 17(1) *Youth Justice* 22 (at p 25).

70 These sentiments are also echoed in case law. In *Public Prosecutor v Daryl Lim Jun Liang* [2015] SGDC 144 at [24]–[25], the district judge cautioned that the court must give careful attention to circumstances in which incarceration (especially of an extended nature) is not necessary and which in

fact could hinder change and recovery by estranging an offender from persons crucial to his rehabilitative process. Incarceration is unnecessary, for example, for youthful offenders who have been assessed to have a high capacity for rehabilitation and adequate family support. In fact, it may adversely affect their rehabilitation and, ironically, thwart the objectives that it seeks to achieve. This is because incarceration could impact the recovery and successful re-entry by the offender into society through the attachment of a criminal record. Similar notions are also articulated in the Parliamentary Debates, where it was said that placing young offenders on probation would allow them to continue with their education or employment, which, in turn, would give them the opportunity to turn over a new leaf and become a responsible member of society (see [32] above).

71 The facts of the present case, as I mentioned, are unusual. After the first probation report was produced, three supplementary probation reports were generated largely because of the *additional* information provided by the Prosecution in the course of proceedings. The first three reports recommended that the appellant was suitable for probation. It was only in the third supplementary probation report that this recommendation changed, and as I have explained, without any principled basis for doing so. Should reformative training be imposed in the circumstances of this case, it may very well have a counterproductive or "anti-therapeutic" effect on the appellant, with a high risk that he would become disenchanted with the legal process and turn bitter or resentful rather than take charge of his own reintegration and rehabilitation.

72 More importantly, a sentence of reformative training would be immensely disruptive to the appellant's education. The appellant is currently in his third and final year in Ngee Ann Polytechnic and is well on his way to graduating with a Diploma. According to his course chair, Dr Sinaga, if the

appellant were sentenced to a period of reformative training, his status as a student of the school would be revoked. During the hearing of this appeal, Mr Tan, on behalf of the Prosecution, sought to persuade me that there were alternative routes for the appellant to turn his life around after reformative training. I accept that it is technically possible for the appellant to apply to resume his polytechnic studies via the Mid-Stream Re-Admission exercise upon release from reformative training. But this would depend on several factors such as his interview with the staff of the school and his readiness and motivation to complete his course.[57] I also acknowledge that it is open to the appellant to aim to complete his GCE 'A' Level examinations during the period of incarceration, rather than returning to his Diploma course upon release, and apply for a place in university thereafter. Indeed, this is what the appellant intends to do should he be sentenced to reformative training.[58] But again these alternatives are not only disruptive to the appellant's current educational track which is already on the eve of completion but could also place significant hurdles in the way of his rehabilitation process. Moreover, they lack certainty in comparison with the option of allowing the appellant to complete the remainder of his Diploma course.

73 I note further that if the appellant were sentenced to reformative training, he would have to enlist for National Service upon release. He would thus effectively be removed from the education system for a considerable period of time. The road to re-enter the system appears more uncertain. I cannot ignore the possibility and the real risk that the appellant might not have the motivation to resume his education after serving reformative training and National Service. These are the factors which weigh heavily on my mind when I consider which

57 ROP p 286 para 3.2.2 (first supplementary probation report)

58 ROP p 288 para 4.6 (first supplementary probation report)

of the two sentencing alternatives, probation or reformative training, would be more appropriate in the circumstances.

*Concluding remarks*

74 In light of the above, I consider that probation, rather than reformative training, is the more suitable sentencing option in the present case. The appellant has good potential for reform as he has both the personal drive and the conditions favourable to his rehabilitative journey. His apparent lack of candour with regard to the full extent of his drug activities and associates, while troubling when viewed in isolation, should not have impacted the probation officer and the District Judge's view of his rehabilitative capacity. The disruptive consequences of a sentence of reformative training in the circumstances of the present case reinforces my conclusion.

75 In assessing the suitability of a sentence of probation, I reiterate that I do not for the moment propose to ignore the indisputable need for deterrence given the serious nature of the offences that the appellant has committed. But on the unique facts of this case, the proposed conditions for the appellant's probation are, in my assessment, sufficient to meet the objective of deterrence. The duration of probation recommended in the first and second supplementary probation reports is 36 months. This is the maximum duration of probation that can be imposed under s 5(1) of the POA. The period of hostel residence at Hope House is recommended to be 12 months, which is also the longest period of residence in an approved institution permitted under s 5(3A) of the POA. The appellant will have to perform a considerable 240 hours of community service. He will also be required to undergo regular urine tests at the Central Narcotics Bureau. While he is at Hope House, Brother Wee and his staff have undertaken to keep close surveillance on him, monitoring school schedule[59] as well as his

compliance with time restrictions and with urine tests.[60] Even after he leaves Hope House, he will be electronically monitored for a substantial period of time. These strict conditions, in my mind, would be effective in deterring the appellant and other like-minded potential offenders from repeating the errant behaviour presented in this case.

**Observations on the Prosecution's disclosure practices for pre-sentencing reports**

76 Before I conclude this judgment, I wish to make some final observations on the Prosecution's disclosure practices in the preparation of pre-sentence reports. As is evident from the discussion at [12]–[18] above, the second and third supplementary probation reports were necessitated primarily by reason of the Prosecution's disclosure of the statements of (a) the appellant; and (b) Bryant in the course of the proceedings. Clearly these are materials which the Prosecution regarded as relevant for sentencing purposes. Yet, they were not provided to the probation officer at the outset.

77 When I questioned Mr Tan about the disclosure practices of the Prosecution during the hearing of the appeal, he informed me that information such as the Notes of Evidence and police statements are not ordinarily furnished to probation officers as a matter of practice. I acknowledge that there may be good reasons for this practice, for instance, it may be necessary to avoid prejudicing the probation officer's independent assessment of the offender's suitability for probation. I also recognise that the disclosure of additional information over the course of the proceedings in the present case was not deliberate and may have been necessitated by the appellant's (perhaps

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59 ROP p 56

60 ROP p 295 paras 3.3–3.4 (second supplementary probation report)

unexpected) challenge over whether he had sold drugs to Bryant on an occasion prior to his arrest.

78 However, if it is the Prosecution's case that the additional information would be relevant for sentencing purposes, the onus is on the Prosecution to either bring these matters to the attention of both the court and the probation officer *at the outset* or as soon as reasonably practicable. Alternatively, the information in these materials could be included in the agreed statement of facts. This would ensure that the probation officer has the full information at his or her disposal to make an accurate assessment of the case from the beginning. This is especially pertinent in cases where such information is not new material that only came to light in the course of proceedings, but was already in the Prosecution's possession at the time the probation report was called for. Providing early disclosure as a matter of practice would minimise the need for constant re-evaluation of a candidate's suitability for probation based on the further provision of additional information to the probation officer, which would not only lengthen the court process, but also have potentially negative consequences on the offender should the probation officer's recommendations vacillate over the course of proceedings. The offender would furthermore be subjected to needless stress whenever re-assessment by the probation officer is ordered by the court on account of additional information that had always been in the possession of the Prosecution.

**Conclusion**

79 For the reasons above, I allow the appeal. The sentence of reformative training imposed by the District Judge is substituted with 36 months' split probation (18 months intensive, 18 months supervised), with the following additional conditions:

(a) The appellant is to voluntarily reside at Hope House for a period of 12 months;

(b) The appellant is to remain indoors daily from 10pm to 6am;

(c) The appellant is to be electronically monitored for a period of six months upon discharge from Hope House, or until he is enlisted in National Service, whichever is later;

(d) The appellant is to perform 240 hours of community service;

(e) The appellant is to undergo a regular urine test regime;

(f) The appellant is to undergo targeted drug intervention programmes;

(g) The appellant is to undergo a Progress Accountability Court review in four months' time;

(h) The appellant's parents are to be bonded in the sum of $10,000 to ensure his good behaviour; and

(i) Should the appellant breach any of the probation conditions, the case is to be re-fixed for hearing *before me* for review and/or resentencing.

Steven Chong
Judge of Appeal

Chong Yi Mei (Zhang Yimei) (Patrick Ong Law LLC) and Haziq Ika Bin Zahidi (Eversheds Harry Elias LLP) for the appellant;
Andrew Tan (Attorney-General's Chambers) for the respondent.

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