IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 209

Magistrate's Appeal No 9135 of 2015

Between

SIM YEOW KEE

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

Magistrate's Appeal No 9140 of 2015

Between

LOI WENDA

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]

Sim Yeow Kee
v
Public Prosecutor and another appeal

[2016] SGHC 209

High Court — Magistrate's Appeals Nos 9135 and 9140 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and See Kee Oon JC
12 July 2016

29 September 2016 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Magistrate's Appeal No 9135 of 2015 ("MA 9135/2015") is an appeal against sentence brought by the offender, Sim Yeow Kee ("Sim"). Sim pleaded guilty to three charges (see [5] below) on 21 July 2015, and was sentenced to a total of seven years' corrective training ("CT") on 11 August 2015. The written decision of the District Judge dated 4 September 2015 is reported as *Public Prosecutor v Sim Yeow Kee* [2015] SGDC 245 ("GD 1"). Sim appeals against his sentence on the basis that it is manifestly excessive.

2 Magistrate's Appeal No 9140 of 2015 ("MA 9140/2015") is an appeal against sentence brought by the offender, Loi Wenda ("Loi"). Loi pleaded guilty to seven charges (see [7] below) on 28 July 2015, with 12 other charges being taken into consideration for sentencing purposes, and was sentenced to a

total of five years' CT and 12 strokes of the cane on 18 August 2015. The matter was heard by the same District Judge who heard Sim's case ("the DJ"), and his written decision dated 15 September 2015 is reported as *Public Prosecutor v Loi Wenda* [2015] SGDC 252 ("GD 2"). Loi appeals against his sentence on the basis that it is manifestly excessive.

3 The immediate issue before us in MA 9135/2015 and MA 9140/2015 ("these Appeals") is whether the respective sentences imposed on Sim and Loi ("the Appellants") are manifestly excessive. This in turn brings into play the interaction between the CT regime and the regime of normal imprisonment, which we shall hereafter refer to as "regular imprisonment" where appropriate, to distinguish it from CT and other forms of incarceration that exist under Singapore's penal framework. More specifically, what we have to consider is whether, in respect of an offender who satisfies the statutorily-prescribed technical requirements to be sentenced to CT, the court should impose a sentence of CT or one of regular imprisonment in view of two major changes made in 2014 to the latter regime, namely, the implementation of the Mandatory Aftercare Scheme ("the MAS") and the Conditional Remission Scheme ("the CRS"). As this underlying issue is pertinent to our decision on both of these Appeals, we heard them together.

Background

MA 9135/2015

4 Sim is a 56-year-old male. On 6 May 2015 at 4.45pm, he was arrested at the Royal Sporting House store in Tampines Mall. He had taken two pairs of "Adidas" shorts valued at $120 from a display rack, put them in a plastic bag and then left the store without paying for them at 4.15pm. It was discovered during the investigations following his arrest that he had also

previously stolen a bottle of "Chanel" perfume from the Isetan store at Tampines Mall on 12 May 2014. The urine samples that were procured from Sim after his arrest contained evidence of the consumption of morphine, a specified drug listed in the Fourth Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). Sim admitted to consuming heroin in a male toilet at Tampines Mall sometime in the afternoon on 6 May 2015.

5 The three charges which Sim pleaded guilty to ("Sim's Charges") are summarised in Table 1 below:

Table 1: Sim's Charges

Offence date	**Charge**	
12 May 2014	Theft in a building used as a dwelling-house or for the custody of property ("theft-in-dwelling")	s 380 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code", which expression also refers, where applicable, to the corresponding predecessor version)
6 May 2015	Theft-in-dwelling	s 380 of the Penal Code
6 May 2015	Consumption of a specified drug	s 8(*b*)(ii), punishable under s 33(1) of the MDA

6 Sim's antecedents over the years ("Sim's Antecedents") are summarised in Table 2 below:

Table 2: Sim's Antecedents

Date of conviction	Charge(s)	Sentence
31 March 1977	Consumption of a controlled drug	6 months in a Drug Rehabilitation Centre ("DRC")
16 September 1977	Consumption of a controlled drug	6 months in a DRC
9 January 1981	Consumption of a controlled drug	18 months in a DRC
17 January 1983	Consumption of a controlled drug	30 months in a DRC
5 December 1985	Consumption of a controlled drug	6 months in a DRC (later extended to 18 months)
16 August 2001	Three counts of theft-in-dwelling	6 months' imprisonment
30 July 2002	One count of theft-in-dwelling	12 months' imprisonment
29 April 2003	One count of theft-in-dwelling	10 months' imprisonment
22 April 2004	Three counts of theft-in-dwelling	5 years' CT
11 September 2010	Consumption of a specified drug	6 months in a DRC
10 September 2011	Consumption of a specified drug	6 months in a DRC

Date of conviction	Charge(s)	Sentence
7 November 2012	One count of theft-in-dwelling	6 months' imprisonment
24 October 2014	Two counts of theft-in-dwelling	9 months' imprisonment

MA 9140/2015

7 Loi is a 28-year-old male. The seven charges which Loi pleaded guilty to ("Loi's Charges") are set out in Table 3 below:

Table 3: Loi's Charges

Offence date(s)	Charge	
19 May 2014, 18 December 2014, 2 March 2015 and 9 March 2015	One count of abetting harassment and three counts of harassment on behalf of an unlicensed moneylender (the "Harassment charges")	s 28(1)(*b*), punishable under ss 28(2)(*a*) and 28(3)(*b*)(i) of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("the Moneylenders Act") (The abetment charge was brought under s 28(1)(*b*) of the Moneylenders Act read with s 109 of the Penal Code.)

Offence date(s)	**Charge**	
12 May 2014 and 2 March 2015	Two counts of failing to report for a urine test (the "Urine Test charges")	Reg 15(3)(*f*) of the Misuse of Drugs (Approved Institutions and Treatment and Rehabilitation) Regulations (Cap 185, Rg 3, 1999 Rev Ed) ("the MDA Regulations")
12 March 2015	Enhanced consumption of a specified drug	s 8(*b*)(ii), punishable under s 33(4) of the MDA

8 Eight other Harassment charges and four other Urine Test charges were taken into consideration for the purposes of sentencing.

9 The Harassment charges against Loi relate to one instance where he abetted the harassment of debtors on behalf of an unlicensed moneylender (one "Sam") by instructing his friend to splash red paint on the door of a debtor's house and write the phrase "… OP [owe money, pay money]" on the wall, and three other instances where Loi himself splashed the doors of the houses of Sam's debtors with either red paint or diluted soya sauce.

10 Loi was arrested on 12 March 2015 at Lavender Mass Rapid Transit station on suspicion of having consumed a controlled drug. His urine samples were found to contain methamphetamine, a specified drug under the MDA, and he admitted to having consumed "Ice". At the material time, Loi was

under a compulsory 24-month drug supervision order issued pursuant to reg 15 of the MDA Regulations. The period of supervision was from 18 September 2013 to 17 September 2015. In this connection, Loi had failed to turn up for his urine test on 12 May 2014 and 2 March 2015 without any valid reason.

11 Loi's antecedents over the years ("Loi's Antecedents") are summarised in Table 4 below:

Table 4: Loi's Antecedents

Date of conviction	**Charge(s)**		**Sentence**
29 August 2002	Two charges of distributing uncensored/ obscene films	ss 21(1)(*b*) and 29(3) of the Films Act (Cap 107, 1998 Rev Ed)	30 months at a Juvenile Home
26 August 2004	Eight counts of theft and criminal trespass (23 other similar charges taken into consideration ("TIC"))	ss 379 and 447 of the Penal Code	Reformative training
18 July 2006	Theft and mischief	ss 379 and 427 of the Penal Code	6 months' imprisonment
19 December 2007	Ten charges of theft and dishonest receipt of stolen property (11 other similar charges TIC)	ss 379 and 411 of the Penal Code	12 months' imprisonment

Date of conviction	**Charge(s)**		**Sentence**
23 March 2009	30 charges involving theft, criminal trespass and fraudulent possession of property (63 other similar charges TIC)	ss 379 and 447 of the Penal Code, and s 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed)	36 months' imprisonment
21 September 2011	Five counts of theft and dishonest misappropriation of property with common intention (11 other similar charges TIC)	ss 379 and 403, read with s 34 of the Penal Code	24 months' imprisonment
1 February 2013	Three counts of assisting an unlicensed moneylender and one count of drug consumption (four other similar charges TIC)	s 14(1)(*b*)(i) of the Moneylenders Act and s 8(*b*)(ii) of the MDA	12 months' imprisonment

12 As the Prosecution highlighted, Loi committed 173 previous offences over a period of just slightly more than a decade.

The DJ's decision

MA 9135/2015

13 The DJ called for a pre-sentencing CT suitability report on Sim ("Sim's CT report") to assess whether he was suitable to undergo CT "based on [his] seemingly recalcitrant criminal behaviour" (see GD 1 at [9]). After considering Sim's CT report and the circumstances of the case, the DJ imposed a sentence of seven years' CT. The DJ's reasons for imposing this sentence can be summarised as follows:

(a) Sim had a moderate to high risk (49–60%) of reoffending. This suggested a propensity to criminal behaviour, which was corroborated by Sim's Antecedents and the fact that there was only a short lapse of time between his release from prison and his next occasion of reoffending (see GD 1 at [12]).

(b) Sim: (i) did not have good family support; (ii) had a heroin abuse problem; (iii) had few pro-social associates; and (iv) had an erratic employment history. Cumulatively, these facts showed that he had a tendency towards crime, and that "it was expedient for the prevention of crime that he be removed from society whilst he [underwent] training to correct his criminal behaviour" (see GD 1 at [13]).

(c) Sim was nonetheless amenable to reform as he was remorseful, and it appeared that he had the capacity to make significant changes to his behaviour when placed in a controlled environment (see GD 1 at [14]).

(d) Sim was physically and mentally fit for CT, and therefore, there were no "special reasons" for not sentencing him to CT (see GD 1 at [15]).

(e) With regard to quantum, "a longer period of [CT] was warranted" as: (i) the five-year CT term previously imposed on Sim "did not have the desired outcome"; and (ii) there was a "significant escalation" of Sim's offending behaviour (see GD 1 at [16]).

MA 9140/2015

14 The DJ likewise called for a pre-sentencing CT suitability report on Loi ("Loi's CT report") to assess whether he was suitable to undergo CT. After considering Loi's CT report and the circumstances of the case, the DJ imposed a sentence of five years' CT and three strokes of the cane for each of the four Harassment charges (*ie*, a total of 12 strokes of the cane). The DJ's reasons for sentencing Loi to CT can be summarised as follows:

(a) Loi had a high risk (62%) of reoffending. This was borne out by Loi's Antecedents and the fact that there had been only a short lapse of time between his release from prison in 2013 and his reoffending. This was aside from the fact that he had committed the drug consumption offence while he was under a drug supervision order (see GD 2 at [17]).

(b) Loi: (i) did not have family support and lived with his girlfriend, who was herself "saddled with a drug problem"; (ii) had been unable to settle down into any meaningful employment; (iii) had a problem with drug abuse and gambling; and (iv) lacked pro-social associates. Cumulatively, these factors showed that he had a tendency

towards crime, and that "it was expedient for the prevention of crime that he be removed from society whilst he underwent training to correct his criminal behaviour" (see GD 2 at [18]).

(c) Loi was amenable to reform and there was evidence of remorse on his part (see GD 2 at [19]).

(d) Loi was physically and mentally suited for CT, and therefore, there were no "special reasons" for not sentencing him to CT (see GD 2 at [19]).

(e) With regard to quantum, "[since] the prosecution made no submission on [the length of the sentence]", the DJ "was of the opinion that the minimum period prescribed by law was appropriate" (see GD 2 at [20]).

CT, the MAS and other related schemes and concepts

15 As we mentioned earlier at [3] above, these Appeals bring to the fore the question of whether an offender who satisfies the technical requirements to be sentenced to CT should be sentenced to that form of incarceration or to regular imprisonment in view of the changes made in 2014 to the regular imprisonment regime and their attendant effect on the operating environment of the CT regime. To set the context for our discussion of this issue and our decision in these Appeals, it is necessary for us to provide some background to the CT regime, the MAS and the CRS.

16 Before we do so, we first outline the key changes to the operating environment of the CT regime following the introduction of the MAS and the CRS. These can be summarised as follows:

(a) CT was originally devised as a scheme of punishment for repeat offenders. As originally devised, it offered rehabilitative programmes that were "qualitatively" different from those offered to inmates serving sentences of regular imprisonment (referred to hereafter as "regular prison inmates" where appropriate to the context). However, there is now no longer any "*qualitative*" difference between the rehabilitative programmes offered to CT inmates and those offered to regular prison inmates. Today, there is only a potential *quantitative* difference between CT and regular imprisonment, in that in certain circumstances, the minimum statutorily-prescribed duration of CT may be appreciably longer than the term of regular imprisonment that would otherwise likely be imposed on the offender for the offence in question (referred to hereafter as the "underlying offence" where appropriate to the context).

(b) At the same time, the regular imprisonment regime now incorporates the MAS and the CRS, both of which came into effect on 1 July 2014 pursuant to the Prisons (Amendment) Act 2014 (Act 1 of 2014) ("the Prisons (Amendment) Act 2014"). The MAS is a targeted initiative offered to those sentenced to regular imprisonment who are regarded as having a higher risk of reoffending after their release from prison. It is a programme of structured aftercare under which mandatory aftercare conditions may be imposed on an inmate upon his release from prison so as to assist in his rehabilitation and reintegration into society. The MAS is not available to CT inmates, although it appears that they may volunteer for such aftercare. This raises the question of whether, in cases involving repeat offenders who satisfy the technical requirements to be sentenced to CT, the sentencing court should generally opt for regular imprisonment instead of CT because

these offenders are the ones who are seemingly most in need of such targeted aftercare.

(c) Under s 50I of the Prisons Act (Cap 247, 2000 Rev Ed) ("the Prisons Act"), a regular prison inmate: (a) who is serving an aggregate imprisonment term of more than 14 days; and (b) whose sentence is neither a default sentence nor a sentence of life imprisonment is entitled to a remission of one-third of his aggregate imprisonment term after he has served "two-thirds of all the consecutive terms of imprisonment to which [he] was sentenced" (see s 50I(1)(*a*)(i) of the Prisons Act). The CRS contemplates that those who are released on remission of their sentences may have their remission revoked in certain circumstances. Unlike regular prison inmates, CT inmates are not automatically entitled to remission. Instead, after serving two-thirds of their sentence, they "shall become eligible for release on licence" (see reg 5 of the Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010 (S 803/2010) ("the CT Regulations")), and such licence may be revoked in circumstances similar to those prescribed under the CRS. On this basis, the Appellants argue that "qualitatively", there is no longer any difference between CT and regular imprisonment, and even quantitatively, there is a diminished difference between these two forms of incarceration (see [57] below).

17 In summary, in our judgment:

(a) There is no longer any "*qualitative*" difference between CT and regular imprisonment today.

(b) However, there remains a *quantitative* difference between these two forms of incarceration. This arises in two ways:

(i) The minimum statutorily-prescribed term of CT is a period of five years. This will often be appreciably longer than the term of regular imprisonment that would otherwise likely be imposed on the offender for the underlying offence.

(ii) Although the CRS as it applies to regular prison inmates and the release on licence ("ROL") scheme as it applies to CT inmates bear certain similarities, they remain materially different in one critical respect. Almost all regular prison inmates will qualify for remission; as against this, only about a quarter of CT inmates will qualify for ROL, which remains a discretionary scheme.

(c) Because CT is designed to serve the twin goals of reformation of the offender and crime prevention, sentencing courts should prefer CT where it is an available sentencing option, and where it is considered that a longer term of incarceration is called for than the term which would likely be imposed if the offender were sentenced to regular imprisonment instead of CT.

(d) However, sentencing courts should balance this against two other considerations, which may bear weight to a greater degree when a *shorter* term of CT is contemplated:

(i) the sentencing court should not impose CT if it would result in punishment that is *unduly disproportionate* to the aggregate term of regular imprisonment which would otherwise likely be imposed; and

(ii) the sentencing court should consider the rehabilitative benefits of the MAS being made available to potential CT inmates if they were sentenced instead to regular imprisonment.

(e) The factors outlined in sub-para (d) above may bear little weight where a long term of CT is called for, since the alternative would be a correspondingly long term of regular imprisonment. Moreover, the emphasis in such cases would likely be on crime prevention to a greater degree. Indeed, in such cases, the sentencing court should consider imposing the alternative sentence of preventive detention ("PD") instead, which we shall explain further below.

18 We now elaborate on each of the incarceration regimes mentioned above and the concepts which underlie them.

The CT regime

19 Although the CT regime in Singapore was transplanted from England, there is a marked difference in the way it has evolved here as compared to in England. For this reason, we propose to discuss the legislative history of the CT regimes in both jurisdictions. We shall then discuss the current statutory regime on CT in Singapore and the evidence of the Singapore Prison Service ("the SPS") as to how CT is presently administered.

Legislative history in England

20 As noted in J D McClean, "Corrective Training – Decline and Fall" [1964] Crim LR 745 ("*McClean on CT*") at pp 745–746, the origins of CT can be found in the proposals set out in the report of the Departmental Committee on Persistent Offenders ("the DC") in 1932. In that report, the DC highlighted an "illogical gap" between Borstal training (the approximate equivalent to the

present-day reformative training ("RT") regime in Singapore), which was available for offenders under the age of 21, and PD, which was designed to segregate persistent offenders above the age of 30. While the DC noted that sentences of regular imprisonment would meet the needs of some of the offenders in the 21–30 age group, it considered that there was a need for "some special form of sentence for the younger persistent offender, for a period of time long enough for effective training to be carried out. This form of sentence would not be subject, to the usual extent, to the principle linking the length of sentence to the gravity of the offence" (see *McClean on CT* at p 746).

21 CT was thus introduced in England in 1948 pursuant to s 21(1) of the Criminal Justice Act 1948 (c 58) (UK) ("the CJA 1948 (UK)") to provide such a "special form of sentence for the younger persistent offender".

22 In *R v Ledger* [1950] 1 All ER 1104 ("*Ledger*"), the English Criminal Court of Appeal (Lord Goddard CJ presiding) was apprised by the Prison Commissioners that CT was "*qualitatively*" different from regular imprisonment in so far as the conditions of incarceration and the discipline of inmates were concerned.

23 CT was initially imposed on many offenders in England after its introduction, but this led to resource constraints within the prison system. These constraints are noted in John C Spencer, "The Use of Corrective Training in the Treatment of The Persistent Offender in England" (1953) 4 J Crim L Criminology and Police Sci 40 ("*Spencer*") at p 43 as follows:

> *It was impossible for the Prison Commissioners to foresee that the number of men sentenced would be so high.* During the first eight months sentences were passed on 1106 men. The number of women received, however, was by comparison

> small, being only 54. In March, 1951, there were 2,186 men and 89 women in prison serving sentences of Corrective Training, and *the difficulties caused by overcrowding were hardly anticipated by the prison administration. Owing to the increase of numbers in local prisons the introduction of Corrective Training wings made the differentiation between this type of sentence and simple imprisonment particularly difficult.* [emphasis added]

24 In fact, contrary to the observations in *Ledger*, sometime towards the end of 1949, because of the resource constraints that we have just alluded to, it was confirmed by the Home Secretary of the United Kingdom ("the Home Secretary") that the conditions of CT in England were already, at least in part, identical to those of regular imprisonment. The Home Secretary's note to this effect to a Member of Parliament was recounted as follows (see *House of Commons Debates* (2 December 1949) vol 479 at col 1469):

> … Enclosed is a note which indicates the general nature of corrective training and preventive detention. *At present prisoners sentenced to either are received initially into local prisons, where they undergo a period of observation* to assess their suitability for training, or for removal to a 'second stage' preventive detention prison, as the case may be. *This period is spent under conditions identical with those of ordinary imprisonment.* For persons sentenced to corrective training the initial period should last for only a few weeks while they are awaiting removal to a regional training prison … The note from the Home Secretary continued: 'It is hoped shortly to set aside Reading Prison as an allocation centre for corrective training prisoners, so that in the future *these men will not serve any part of their sentence under conditions of ordinary imprisonment.*' … [emphasis added]

25 The Prison Commissioners subsequently issued the *Report of the Prison Commissioners for 1950*, Cmd 8356 of 1951 ("*Report of the Prison Commissioners for 1950*"), where the following view on CT was expressed (see *Spencer* at p 42):

> … [T]he purpose of the [CJA 1948 (UK)] was not to provide some new form of training, but to give the courts power to

> pass sentences long enough to enable the methods of training already developed in training prisons to be effectively applied.

26 This view, however, did not fully reflect either the views expressed in *Ledger* (see [22] above) or the position of the Home Secretary, who had, in the note mentioned at [24] above, highlighted the aim of eventually mustering sufficient resources such that a "qualitative" difference between CT and regular imprisonment might be achieved.

27 Be that as it may, in *Practice Direction (Corrective Training: Preventive Detention)* [1962] 1 WLR 402, Lord Parker CJ echoed the position reflected in the *Report of the Prison Commissioners for 1950*. He noted (at [1]) that a sentence of CT was imposed not to enable the prisoner "to learn a trade", but "to enable a general training to be given to a prisoner whom the court considers to be in need of it", and was "designed to stop his criminal tendencies and to make him fit to pull his weight as a responsible citizen". Therefore, CT was to be imposed in lieu of regular imprisonment where the court felt that a sentence of regular imprisonment in itself would not provide "*sufficient time* for training" [emphasis added] (likewise at [1]). Hence, the focus was very much on the length of time spent in prison, rather than on how that period of time would be spent in a way which was different from what would be the case under regular imprisonment.

28 As noted in Rupert Cross, *Punishment, Prison and the Public* (Hamlyn Trust Lectures 1971, 23rd Series) (Steven & Sons, 1971) ("*Cross*") and Leon Radzinowicz & Roger Hood "Incapacitating the Habitual Criminal: The English Experience" (1979–1980) 78 Mich L Review 1305 at p 1381, the revelation that the conditions of CT were no different from those of regular imprisonment led to judges in England drastically reducing its employment because of the discomfort in extending an offender's sentence to an extent

considerably beyond that warranted by his offence. As observed in *Cross* (at p 163):

> *On discovering, as some of them did, that there was no qualitative difference between a sentence of corrective training and a sentence of imprisonment, judges began to flinch at the idea of protracting an offender's sentence to an extent considerably beyond that merited by his offence.* On discovering, as many of them no doubt did, that the results of corrective training were, to put it mildly, not very encouraging, *the judges ceased to employ the sentence very much …* [emphasis added]

29 CT was eventually abolished in England in 1967 by s 37(1) of the Criminal Justice Act 1967 (c 80) (UK) (see *Cross* at p 163). In sum, a different form of rehabilitative training was contemplated when CT was introduced in England. Part IV of the Prison Rules 1949 (SI No 1073) (UK), which was enacted pursuant to the CJA 1948 (UK), contemplated, for example, that CT inmates would be provided "technical training in skilled trades", and that "special attention [would be given] to education" (see *McClean on CT* at p 746). However, the implementation of CT in England was, as Mr Jerald Foo ("Mr Foo"), the *amicus curiae* whom we appointed for MA 9135/2015, put it, "stymied by operational and resource difficulties in various parts of the country that worsened over time". The *retrograding* of CT to regular imprisonment in England saw it being imposed in fewer and fewer cases until Parliament eventually saw fit to abolish it.

Legislative history in Singapore

30 The CT and PD regimes in Singapore were introduced to bring Singapore's penal system in line with that of England (see *Proceedings of the Second Legislative Council of the Colony of Singapore*, 4th Session 1954/55, 21 September 1954 at col B 261). This was done pursuant to s 2 of the Criminal Justice (Temporary Provisions) Ordinance 1954 (Ordinance 22 of

1954) ("the CJ(TP) Ordinance 1954"), which adopted ss 21(1) and 21(2) of the CJA 1948 (UK). Like their English counterparts, the Singapore courts were empowered to impose CT of two to four years "in lieu of any other sentence".

31 However, it was noted in the *Report of the Prisons Reorganisation Committee 1974* (Prisons Department, Singapore) that sentences of CT and PD were rarely imposed by the courts in Singapore. It recommended to Parliament that this should not be the case as "[CT and PD] not only permit the Prison authorities to devise special treatment programmes, but also provide for the statutory supervision and, hence, control of the offender on his release". Parliament appeared to have accepted this recommendation. It amended the Criminal Procedure Code (Cap 113, 1970 Rev Ed) ("the CPC (1970 Rev Ed)") in 1975 to increase the period of CT which the court could impose to "not less than three nor more than seven years". It also provided that the court (on satisfaction of the criteria in s 12(1) of the CPC (1970 Rev Ed)) "*shall pass*, in lieu of any sentence of imprisonment, a sentence of [CT]" [emphasis added] if it was satisfied that "it [was] expedient with a view to [the] reformation and the prevention of crime" in relation to the offender at hand, "*unless it [had] special reasons for not doing so*" [emphasis added].

32 At the second reading of the Bill which introduced the amendments noted at [31] above, the Minister of Law and Environment, Mr E W Barker, explained that the legislative intent of these amendments was to "compel" the court to "consider passing a sentence of [CT]" (see *Singapore Parliamentary Debates*, *Official Report* (19 August 1975) vol 34 at cols 1216–1217).

33 In 1984, pursuant to the Criminal Procedure Code (Amendment No 2) Act 1984 (Act 24 of 1984) ("the CPC (Amendment) Act 1984"), Parliament

further increased the length of CT that the court could impose to a period of between five and 14 years, which is the current range. During the Parliamentary debates on the Bill which introduced this amendment, the Second Minister for Law, Prof S Jayakumar, stated that the reason for increasing the sentencing range for CT was to "enhance the sentencing powers of the court in dealing with persistent or habitual offenders so that they may be kept in custody for longer periods". This amendment should be viewed in light of the fact that Parliament also noted that there was generally a need for more deterrent penalties as the incidence of crime in Singapore had been on the rise (see *Singapore Parliamentary Debates*, *Official Report* (26 July 1984) vol 44 at col 1897).

34 We observe that PD has, broadly speaking, taken a similar course as CT since its introduction in Singapore by the CJ(TP) Ordinance 1954. Initially, the court could impose PD for a period of between five and 14 years in lieu of any sentence of regular imprisonment. While the term of PD that the court could impose was not increased by the amendments to the CPC (1970 Rev Ed) in 1975, the provision relating to PD, namely, s 12(2), was amended to state that the court (on satisfaction of the criteria in s 12(2) of the CPC (1970 Rev Ed)) "*shall pass*, in lieu of any sentence of imprisonment, a sentence of [PD]" [emphasis added] if it was satisfied that "it [was] expedient for the protection of the public that [the offender] be detained", *unless it had special reasons for not doing so*. This mirrored the amendment made to s 12(1) of the CPC (1970 Rev Ed) in relation to CT, which we mentioned earlier at [31] above. The term of PD that the court could impose was later increased in 1984 by the CPC (Amendment) Act 1984 to a period of between seven and 20 years, which is the current range, for reasons similar to those outlined at [33] above.

The current statutory provisions on CT in Singapore

35 The law as it currently stands in relation to CT is set out in the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") and the CT Regulations. Section 304(1) of the CPC provides as follows:

> **304.**—(1) Where a person of the age of 18 years or above —
>
> > (*a*) is convicted before the High Court or a District Court of an offence punishable with imprisonment for 2 years or more, and has been convicted in Singapore or elsewhere at least twice since he reached the age of 16 years for offences punishable with such a sentence; or
> >
> > (*b*) is convicted at one trial before the High Court or a District Court of 3 or more distinct offences punishable with imprisonment for 2 years or more, and has been convicted and sentenced in Singapore or elsewhere to imprisonment for at least one month since he reached the age of 16 years for an offence punishable with imprisonment for 2 years or more,
>
> then, *if the court is satisfied that it is expedient with a view to his* ***reformation and the prevention of crime*** *that he should receive training of a corrective character for a substantial period of time, followed by a period of supervision if released before the expiration of his sentence*, the court, unless it has special reasons for not doing so, shall sentence him to ***corrective training*** for a period of 5 to 14 years in lieu of any sentence of imprisonment.
>
> …
>
> [emphasis added in italics and bold italics]

36 By way of comparison, we also set out below the current statutory provision on PD, namely, s 304(2):

> Where a person of the age of 30 years or above —
>
> > (*a*) is convicted before the High Court or a District Court of an offence punishable with imprisonment for 2 years or more, and has been convicted in Singapore or elsewhere at least 3 times since he reached the age of 16 years of offences punishable with such a sentence, and was on at least 2 of those occasions sentenced to imprisonment or corrective training; or

> (*b*) is convicted at one trial before the High Court or a District Court of 3 or more distinct offences punishable with imprisonment for 2 years or more, and has been convicted and sentenced in Singapore or elsewhere to imprisonment for at least one month since he reached the age of 16 years for an offence punishable with imprisonment for 2 years or more,
>
> then, *if the court is satisfied that it is expedient for the* ***protection of the public*** *that he should be detained in custody for a substantial period of time, followed by a period of supervision if released before the expiration of his sentence*, the court, unless it has special reasons for not doing so, shall sentence him to ***preventive detention*** for a period of 7 to 20 years in lieu of any sentence of imprisonment.
>
> [emphasis added in italics and bold italics]

37 As can be seen from the two extracts from s 304 of the CPC above, once the technical requirements in s 304(1)(*a*) or s 304(1)(*b*) are satisfied, the court is required to go on to consider the expediency of imposing CT on the offender. Similarly, once the technical requirements in s 304(2)(*a*) or s 304(2)(*b*) are satisfied, the court must go on to consider the expediency of sentencing the offender to PD. However, while the test of expediency in relation to CT in s 304(1) of the CPC directs the court's attention to the goal of "reformation and the prevention of crime", the test of expediency in relation to PD in s 304(2) of the CPC focuses on "the protection of the public". It may also be noted that pursuant to s 304(3) of the CPC, the court must call for and consider a pre-sentencing CT or PD suitability report submitted by the Commissioner of Prisons ("the Commissioner") (or any person authorised by him) on the offender's physical and mental suitability for such a sentence.

38 We mentioned earlier (at [16(c)] above) that an offender who is sentenced to CT has no entitlement to remission, unlike an offender who is sentenced to a term of regular imprisonment of more than 14 days (provided his sentence is neither a default sentence nor a sentence of life imprisonment).

The latter would, by virtue of s 50I of the Prisons Act, be entitled to remission on serving two-thirds of his aggregate term of imprisonment. However, although a CT inmate is not entitled to remission of his sentence, he may be considered for ROL once he has completed two-thirds of his sentence. In this regard, the CT Regulations provide as follows:

> **Release on licence**
>
> **5.** A prisoner sentenced to corrective training shall become eligible for release on licence after he has served two-thirds of his sentence of corrective training.

The SPS's evidence on CT

39 We turn now to the evidence of the SPS on how CT is currently administered in Singapore. Ms Lee Kwai Sem, a Senior Assistant Commissioner Grade 9 who holds the appointment of Director of Rehabilitation and Reintegration in the SPS, filed an affidavit dated 11 March 2016 on behalf of the SPS ("the SPS Affidavit") to explain the following:

(a) the rehabilitation programmes available to inmates, including those sentenced to CT, in prison; and

(b) ROL for CT inmates.

This affidavit was admitted for the purposes of these Appeals following an application by the respondent ("the Prosecution") to this court via Criminal Motion No 16 of 2016 for leave to admit it.

40 In the SPS Affidavit, the SPS states that inmates with a higher risk of reoffending are provided with "more intensive interventions" which are targeted at their criminogenic needs, learning styles and personal characteristics. The key point that we note from the SPS Affidavit is that

compared to a regular prison inmate, a CT inmate has neither a better nor a worse chance of being found eligible for rehabilitation programmes while he is in prison.

41 In relation to the ROL scheme, CT inmates are assessed for their suitability after they have served two-thirds of their sentence based on an assessment of their risk to society and of the progress made towards their rehabilitation. Those who are released on licence because they are assessed as having a lower risk of reoffending are supported and supervised during the ROL period to facilitate their reintegration into society. In contrast, CT inmates who are assessed as continuing to pose a risk to society and being in need of further rehabilitation are not granted ROL. According to the SPS, around 25% of those sentenced to five years' CT are granted ROL. The converse of this is that the majority of such inmates – around 75% in fact – are not granted ROL.

42 It is noteworthy that the SPS does not highlight any "qualitative" differences between the rehabilitation regime for those undergoing CT as opposed to those serving sentences of regular imprisonment. In fact, it was confirmed by the Prosecution at the hearing before us that there is no "qualitative" difference between the rehabilitation regime for CT inmates and that for other prison inmates. This is because, among other things, the same programmes that aid in rehabilitation are available to all inmates in prison.

43 It is to the credit of the SPS that it has mustered the resources to extend effective and targeted rehabilitation programmes to *all* inmates in prison (as opposed to only CT inmates). In this regard, we note that although, in common with England, there are no longer any "qualitative" differences in Singapore between CT and regular imprisonment today, this has come about because of a

markedly different situation from that which obtained in England. There, it was a lack of resources that led to the erosion of the rehabilitative conditions contemplated under the CT regime (see [23]–[29] above). In contrast, here, the SPS has been able to raise the standard of rehabilitative programmes offered to *all* prisoners, regardless of the type of sentence which they are serving. The basic penal system as a whole in Singapore has therefore become more effective in its rehabilitative goals, as a result of which CT no longer enjoys a "qualitative" advantage in terms of the rehabilitation programmes and training that it offers inmates.

The MAS and the CRS

44 Turning now to the MAS and the CRS, we mentioned earlier the provision in the Prisons Act for the remission of sentences of regular imprisonment, the CRS and the MAS (see [16(b)]–[16(c)] above). To recapitulate briefly, once an offender who is sentenced to an aggregate term of imprisonment of more than 14 days (excluding an offender serving a default sentence or a sentence of life imprisonment) has served two-thirds of his aggregate sentence, the Commissioner "shall make a remission order" in respect of the offender (see s 50I(1)(*a*)(i) of the Prisons Act). There are some circumstances where the offender may lose his entitlement to remission, but this is not material for the purposes of these Appeals. The effect of a remission order is that the offender is released on the day after he has reached the two-third mark of his imprisonment sentence. Under the CRS, it is "*the basic condition* of *every* remission order" [emphasis added] that the offender does not commit an offence while the remission order is in effect (see s 50S(1) of the Prisons Act). An offender who breaches this condition will be liable to an imprisonment term not exceeding the remaining duration of his remission order (see s 50T(1)(*a*) of the Prisons Act).

45 Unlike the CRS, which applies to *all* regular prison inmates released on remission, the MAS applies only to *certain* regular prison inmates released on remission, namely, those who: (a) have committed one or more of the offences listed in the First Schedule of the Prisons Act (essentially drug offences and property offences, for the purposes of these Appeals); and (b) are regarded as having a higher risk of reoffending and requiring greater support in their rehabilitation and reintegration into society.

46 At the second reading of the Bill which introduced the MAS, Mr Masagos Zulkifli B M M, the Senior Minister of State for Home Affairs, explained that the MAS was intended to be a "structured step-down programme" to facilitate the transition and reintegration into society of those regular prison inmates released on remission who were likely to present a higher risk of reoffending. The key portions of his statements in Parliament are reproduced below (see *Singapore Parliamentary Debates*, *Official Report* (20 January 2014) vol 91):

> … The MAS is a structured aftercare regime which provides enhanced community support, counselling and case management, as well as tighter supervision for ex-*inmates who are at higher-risk of re-offending or who need more support in reintegration*. These are drug offenders, property offenders with drug antecedents, serious crime offenders, inmates with sentences of more than 15 years, and inmates sentenced to life imprisonment, if released …
>
> *We are emplacing drug offenders and property offenders with drug antecedents on the MAS because they are more likely to re-offend*. …
>
> *The MAS will be for a period of up to two years*. It comprises three phases: a halfway house stay, home supervision and community reintegration. *Prisons will make a holistic assessment for each individual based on factors, such as the nature of offence, criminal antecedents, progress in prison, risk of re-offending, and family support, in deciding which phases the individual goes through*. Not all individuals will have to go through the three phases. Some may be placed on the halfway house phase while others may be placed directly on the home

> supervision phase. Prisons will inform inmates of their MAS conditions when they are about to be released.
>
> *The MAS will provide structure and support to ex-inmates and help them better reintegrate into society*. There will be consequences for those who breach their MAS conditions. ...
>
> [emphasis added]

47 During the same Parliamentary debate, it was also noted by Nominated Member of Parliament Assoc Prof Eugene Tan Kheng Boon that the MAS would bring about the dual benefits of: "(1) the rehabilitation of the offender; and (2) the protection of the public" (see *Singapore Parliamentary Debates*, *Official Report* (20 January 2014) vol 91).

The statutory scheme in relation to the MAS

48 The statutory framework in relation to the MAS can be found in Div 5 of Part VB of the Prisons Act. Section 50U sets out the circumstances in which the MAS is applicable. The relevant part of s 50U for the purposes of these Appeals is as follows:

> **Application**
>
> **50U.**—(1) This Division applies where —
>
> (*a*) a remission order is made under section 50I or 50J in respect of a prisoner;
>
> (*b*) the prisoner's remission order relates to a sentence (excluding a default sentence) for an offence which is specified in the First Schedule at the time the offence was committed;
>
> (*c*) the prisoner's sentence for the offence, aggregated with any other consecutive term of imprisonment (excluding a default sentence) to which he was sentenced, is longer than the minimum sentence (if any) which, at the time the offence was committed, is prescribed in the First Schedule in relation to the offence;
>
> (*d*) the prisoner has a relevant antecedent for the offence, if any such antecedent has been prescribed in

> the First Schedule in relation to the offence at the time the offence was committed; and
>
> (*e*) the prisoner is not subject to an order removing him from Singapore under the Immigration Act (Cap. 133).

…

49 The First Schedule of the Prisons Act lists the offences in respect of which an offender may be made subject to the MAS ("qualifying offences") and the minimum imprisonment terms which the offender must have been sentenced to for the respective offences. All the minimum sentences prescribed for the qualifying offences are the same, namely, one year's imprisonment. Thus, as long as an offender has an aggregate imprisonment sentence exceeding one year for a qualifying offence, the conditions in ss 50(U)(1)(*b*) and 50U(1)(*c*) of the Prisons Act would be satisfied. Pursuant to s 50U(1)(*d*) of the Prisons Act, it then has to be ascertained from the First Schedule (based on the applicable qualifying offence) whether the offender needs to have a "relevant antecedent" before he is eligible for the MAS. For the purposes of these Appeals, no antecedents are necessary where the qualifying offence is a drug offence under the MDA or the MDA Regulations, whereas a "drug-related antecedent" is needed where the qualifying offence is a property offence under the Penal Code.

50 Section 50V(1) of the Prisons Act states that the Commissioner "may, … for the purpose of facilitating a person's rehabilitation and reintegration into society, require [him] … to comply with mandatory aftercare conditions". These conditions may be imposed for a period "not extending beyond the expiry of the remission order" (see s 50V(2)(*b*) of the Prisons Act). As noted in s 50V(3) of the Prisons Act, these mandatory aftercare conditions include: (a) attending counselling and therapy; (b) providing urine samples; (c) remaining indoors; (d) facilitating house visits; (e) enabling electronic

monitoring; (f) complying with a notice of recall; and (g) complying with such other conditions as may be specified by the Commissioner.

51 If an offender commits a "minor breach" of any of his mandatory aftercare conditions, pursuant to s 50X(1) of the Prisons Act, the Commissioner can "do one or more of the following for the purpose of punishing the person":

> (*a*) administer a written warning to the person;
>
> (*b*) extend the period for which the person is subject to any mandatory aftercare condition, which period shall not extend beyond the expiry of the remission order;
>
> (*c*) vary, cancel or add to the mandatory aftercare conditions of the person's remission order;
>
> (*d*) recall the person to prison for a specified period in accordance with this section.

52 Should the Commissioner exercise his discretion to recall an offender to prison as punishment for a "minor breach", the period of recall cannot be: (a) a period exceeding ten days at a time; (b) a cumulative period of more than 30 days; (c) after the expiry of the remission order; or (d) a period extending beyond the expiry of the remission order (see s 50X(4) of the Prisons Act).

53 A "serious breach" of a mandatory aftercare condition constitutes an offence, and will, pursuant to s 50Y(1)(*a*) of the Prisons Act, result in an imprisonment term not exceeding the remaining duration of the remission order. Where an offender commits two or more "serious breaches" of the mandatory aftercare conditions imposed on him, the court may, pursuant to s 50Y(3) of the Prisons Act, sentence him to imprisonment for each of the offences constituted by the "serious breaches", but the aggregate length of all the sentences must not exceed "the remaining duration of the remission order,

as determined based on the date of commission of the first offence" (see s 50Y(3)(*b*)).

Our appointment of *amici curiae*

54 It will be apparent from what we have said that the MAS and the CT regime both focus on rehabilitation of the offender. However, the effect that the introduction of the MAS should have on the CT regime remains a matter that has yet to be analysed by our courts. It is common ground among all the parties before us that both the Appellants would qualify for the MAS if they were sentenced to regular imprisonment. These Appeals therefore provide an opportunity for us to consider the interaction between the MAS and the CT regime. We decided that it would be appropriate to appoint *amici curiae* to assist us in this regard. For MA 9135/2015, we appointed Mr Foo as the *amicus curiae* (see [29] above); and for MA 9140/2015, we appointed Ms Alina Chia ("Ms Chia").

55 We directed Mr Foo and Ms Chia to address us on two questions ("the Court's Questions"), namely:

(a) What are the appropriate sentencing guidelines for sentences of CT?

(b) How should the sentencing approach towards CT be adjusted in light of the introduction of the MAS, which caters to a selected group of regular prison inmates who: (i) have committed (among other offences) drug and/or property offences; and (ii) are regarded as having a higher risk of reoffending?

Of course, apart from the Court's Questions, the immediate issue before us in these Appeals is, as we mentioned at [3] above, whether the sentences imposed on the Appellants are manifestly excessive.

The parties' submissions

56 The Appellants were unrepresented when Mr Foo and Ms Chia were appointed as *amici curiae*. These Appeals were originally scheduled to be heard on 22 March 2016, but the hearing was adjourned after Mr Irving Choh ("Mr Choh") informed the court on 18 March 2016 that he had been appointed by Loi to act on his behalf in MA 9140/2015. Mr Choh was subsequently appointed by Sim as well to act on his behalf in MA 9135/2015. Mr Choh adopts Mr Foo's submissions in relation to the Court's Questions. Therefore, to avoid repetition, we shall outline only the submissions of the *amici curiae* and the Prosecution where the Court's Questions are concerned. We shall then trace the Appellants' and the Prosecution's respective submissions on the sentences imposed on the Appellants in light of their respective positions on the Court's Questions.

Mr Foo's submissions on the Court's Questions

57 Mr Foo's submissions on the Court's Questions are directed at demonstrating that the introduction of the MAS has resulted in the difference between a sentence of regular imprisonment and one of CT being narrowed to such a degree that the only material difference is that CT mandates a certain minimum duration of incarceration. He contends that this is the case because:

(a) there are no "*qualitative*" differences in the rehabilitative programmes available to regular prison inmates as opposed to CT inmates; and

(b) the introduction of the CRS and the MAS has resulted in the entitlement to remission in relation to regular prison inmates being diluted, and in that sense, the position on remission of sentences of regular imprisonment is now aligned with the position that applies in relation to the ROL scheme under the CT regime.

58 Starting from the premise that "[t]he lack of qualitative differences between [CT and regular imprisonment] means that [CT] is justifiable only if a sentence of [five] years or more is necessary for a prisoner's rehabilitation", Mr Foo proposes the following sentencing framework for CT:

(a) A "gateway consideration" would be whether imprisonment of five years or more is likely to be necessary in order to effect proper change in the offender. In this connection, an analysis of the following would be relevant:

(i) the risk factors and needs of the offender, namely: (A) his tendency to crime; (B) the nature of the previous punishments imposed on him; (C) the nature and seriousness of the underlying offence in question; (D) whether the underlying offence is similar to the offender's antecedents; (E) the length of time between the underlying offence and the offender's antecedents; and (F) whether incarceration of five years or more would benefit the offender; as well as

(ii) the potential responsiveness of the offender, which rests on such considerations as: (A) his signs of remorse (if any); (B) his age; and (C) the previous sentences imposed on him.

(b) This should then be subject to a review of *whether the contemplated CT sentence would be proportionate to the sentence of*

> *regular imprisonment* that the offender is likely to receive for the underlying offence, as well as "proportionate to the objective of rehabilitating the offender".

59 Mr Foo also submits that any time spent by an offender in remand should be taken into account when the court calibrates the length of his CT sentence. In his oral submissions, Mr Foo went further and argued that it would be more expedient if CT sentences were backdated by the court. This has significance because under the law as it currently stands, time spent in remand is generally not taken into account by means of backdating the commencement date of an offender's CT sentence (see *Public Prosecutor v Ng Kim Hong* [2014] 2 SLR 245 ("*Ng Kim Hong*") at [32]).

Ms Chia's submissions on the Court's Questions

60 Ms Chia's submissions on the Court's Questions start from the premise that the MAS signals a clear legislative intent that the aims of regular imprisonment should include rehabilitation in addition to deterrence and retribution. Ms Chia submits that it is difficult to sustain the position that regular imprisonment today has a different aim from CT, given that the programmes in place under both regimes are intended to be rehabilitative as well as deterrent. She therefore argues that regular imprisonment and CT "may be placed on the same scale" in calibrating a sentence.

61 Ms Chia argues that the threshold which has to be crossed in order for CT to be considered "expedient with a view to [the offender's] reformation and the prevention of crime", which is the condition stipulated in s 304(1) of the CPC for the imposition of CT, is now arguably higher than it had previously been as account must be taken of the MAS, which brings the rehabilitative focus of regular imprisonment into play. In her view, the MAS is

a "middle ground" between regular imprisonment and CT, and CT should be imposed "only on habitual offenders who are likely to re-offend".

The Prosecution's submissions on the Court's Questions

62 The Prosecution submits that the introduction of the MAS does not have a bearing on the principles governing when CT should be imposed. In this regard, the Prosecution makes the following arguments:

(a) The MAS was introduced to target a selected group of regular prison inmates who were thought to need more help in rehabilitation and reintegration into society. While it is true that conditions on remission under the CRS along with mandatory aftercare conditions under the MAS may be imposed on such inmates, this is broadly similar to the position that applies to CT inmates who are granted ROL. On this basis, the MAS cannot be deployed as a justification for differentiating a sentence of regular imprisonment from one of CT.

(b) CT, however, allows repeat offenders to be incarcerated for longer periods of time, and this has significance to the interest of crime prevention.

(c) Further, the MAS is only available for a period of up to two years. This leaves a "gap" because an offender who is sentenced to a term of regular imprisonment in excess of six years will have a period of his remission during which the MAS will not be available.

(d) A CT inmate may be denied ROL if he poses a risk to society or requires further rehabilitation before his release. However, a regular prison inmate would generally be *entitled* to be released on remission after completing two-thirds of his aggregate imprisonment term even if

> he continues to pose a risk to society and requires further rehabilitation. In this respect too, CT is different from regular imprisonment.

63 The Prosecution submits that where the court is called upon to sentence a repeat offender with criminal tendencies, it must be guided by the need not only to secure the offender's reformation, but also to prevent the commission of further offences. It further contends that in considering whether CT is the best sentencing option, the court should direct its mind to the test of "expediency", which requires it to balance the relative effectiveness of CT and regular imprisonment as sentencing options, having regard to the interests of the offender's reformation, crime prevention and the need for specific deterrence. However, the Prosecution accepts that in deciding whether it is expedient to impose CT, the court should have regard to the principle of proportionality as between the criminality of the offender's conduct as a whole, the term of regular imprisonment that would likely be imposed for the underlying offence in question and the contemplated CT sentence.

64 We move on next to the parties' submissions on the Appellants' respective sentences.

The question of whether the Appellants' sentences are manifestly excessive

Sim's submissions on appeal

65 In respect of Sim, Mr Choh submits that the *structured* "step down" provided by a sentence of regular imprisonment, which would then be accompanied by the MAS, is desirable because it would give Sim a better chance of reforming. Mr Choh contends that proportionality should be a relevant factor in deciding whether CT should be imposed instead of regular

imprisonment. In this regard, he submits that the seven-year CT sentence imposed on Sim is manifestly excessive. He submits, instead, that an imprisonment term of "approximately two years" would be called for in Sim's case, having regard to his antecedents and the relevant sentencing considerations. His computation is set out in Table 5 below:

Table 5: Sim's position on sentence

Offence date	**Charge**	**Submission on Sentence**
12 May 2014	Theft-in-dwelling	6 months' imprisonment
6 May 2015	Theft-in-dwelling	6 months' imprisonment
6 May 2015	Consumption of a specified drug	12 months' imprisonment
Total maximum sentence		24 months' imprisonment

66 As against this, we set out at [71] below the Prosecution's contention as to the likely term of regular imprisonment that would be imposed on Sim. In particular, the Prosecution submits that the punishment for the two theft-in-dwelling charges would likely be one month's imprisonment for each charge. Mr Choh's rebuttal to this is that the Prosecution's position in this regard is "unrealistic" in view of the previous sentences already imposed on Sim for his theft-in-dwelling offences between August 2001 and October 2014 (see Sim's Antecedents in Table 2 at [6] above).

67 Mr Choh argues that should the court decide to impose CT on Sim instead of regular imprisonment, there is no reason why the minimum five-year term mandated by s 304(1) of the CPC, as opposed to the seven years

imposed by the DJ, would not be sufficient to rehabilitate Sim. In his oral submissions, Mr Choh also highlights that the underlying offences committed by Sim were not of a serious nature. In his view, this too should be taken into account in sentencing.

Loi's submissions on appeal

68 With regard to Loi, Mr Choh notes that Loi lacks rehabilitative support outside prison. On this basis, he submits that the MAS would be beneficial for Loi because it would provide him with the necessary support to enable him to be rehabilitated effectively. Mr Choh notes that Loi lives with his girlfriend, who is herself a drug user. Under the MAS, it would be possible for Loi to receive aftercare at a halfway house and be meaningfully rehabilitated and reintegrated into society.

69 Mr Choh states in his written submissions that "Loi's position is that [his likely imprisonment sentence] ought to be 4.5 years". This, however, was not explained. Moreover, unlike his arguments in relation to Sim, Mr Choh does not appear to suggest that Loi's sentence of five years' CT is disproportionate when compared to his likely term of regular imprisonment for his underlying offences. Indeed, we note that in his oral submissions, Mr Choh appeared to agree with the Prosecution's contention (at [74] and [79] below) that PD, which carries a mandatory minimum term of seven years, should have been imposed on Loi had he qualified for this (Loi is 28 years old, just over one year shy of qualifying for PD).

The Prosecution's submissions on the sentences imposed

(1) Sim's sentence

70 The Prosecution submits that Sim's appeal, MA 9135/2015, should be dismissed as the seven-year CT sentence imposed on Sim is not manifestly excessive. The Prosecution points to the fact that Sim has a history of "regular offending and reoffending". Despite this, the Prosecution takes the view that Sim is capable of reform because he: (a) has repeatedly expressed remorse; (b) has shown that he is capable of keeping away from drugs; and (c) has a sense of responsibility towards his family.

71 The Prosecution's position on the likely sentence of regular imprisonment that Sim would have faced is summarised in Table 6 below:

Table 6: Sim's likely imprisonment sentence

Offence date	**Charge**	**Likely Sentence**
12 May 2014	Theft-in-dwelling	1 month's imprisonment
6 May 2015	Theft-in-dwelling	1 month's imprisonment
6 May 2015	Consumption of a specified drug	15–18 months' imprisonment
Total maximum sentence		20 months' imprisonment

72 The Prosecution makes two points. It first submits that Sim's Charges "are not of such a 'trivial' nature that a sentence of CT would be 'wholly disproportionate'". It also argues that "a jail term of less than 20 months, and

early release after serving about 14 months (with one-third remission)", will not be expedient for the prevention of crime nor for the reformation of a habitual offender like Sim, given that significant periods of incarceration in the past, such as 12 months' imprisonment in 2002, ten months' imprisonment in 2003, five years' CT in 2004 and nine months' imprisonment in 2014, have all not been effective in deterring him from reoffending.

73 The Prosecution, however, also highlights that the five-year CT sentence imposed on Sim in 2004 did help him to stay crime-free after his release for about three years from 2009 to late 2012, *at least in relation to property offences*. The Prosecution acknowledges that Sim was in a DRC during parts of 2010 and 2011, but nonetheless submits that the CT sentence "at least appears to have temporarily halted his propensity to commit [such] offences". In light of these factors, the Prosecution submits that MA 9135/2015 should be dismissed as CT is expedient for Sim's reformation and the prevention of crime.

(2) Loi's sentence

74 The Prosecution likewise submits that Loi's sentence of five years' CT is not manifestly excessive. In fact, the Prosecution takes the position that Loi should have been sentenced to PD had his age permitted, given "the clear danger he poses to society at large" (see also [79] below).

75 In this regard, the Prosecution relies on Loi's Antecedents in Table 4 above (at [11]) and the "[h]igh" risk of recidivism noted in Loi's CT report. In relation to the latter point, the Prosecution relies too on the factors noted by the DJ in GD 2 (see [14(a)]–[14(b)] above).

76 Notwithstanding Loi's high risk of reoffending, the Prosecution considers that "there is a glimmer of hope for Loi's reformation", given that he dedicated portions of his submissions for his appeal (when he was acting in person) to expressing remorse for his criminal conduct and appreciation for the efforts of his aunt, who has been supportive of him.

77 The Prosecution's tabulation of the likely sentence of regular imprisonment that Loi would have faced is summarised in Table 7 below:

Table 7: Loi's likely imprisonment sentence

Offence date(s)	Charge	Likely sentence
19 May 2014, 18 December 2014, 2 March 2015 and 9 March 2015	One count of abetting harassment and three counts of harassment on behalf of an unlicensed moneylender	15–18 months' imprisonment per charge
12 May 2014 and 2 March 2015	Two counts of failing to report for a urine test	6 months' imprisonment per charge
12 March 2015	Enhanced consumption of a specified drug	3 years' mandatory minimum imprisonment

78 The Prosecution highlights that depending on how Loi's imprisonment sentence is calibrated, this could result in an imprisonment term of between four-and-a-half and six years. It argues that CT would be more expedient for the reformation of a habitual offender like Loi and the prevention of crime, as Loi would be deterred by the fact that a CT sentence does not come with any

entitlement to remission. It also submits that there are no "special reasons" why CT should not be imposed in Loi's case.

79 As we noted earlier at [74] above, the Prosecution highlights that in fact, Loi "might well [have been] a suitable candidate for PD given the clear danger he poses to society at large", and that he was "fortunate" not to have been sentenced to PD on account of his age.

The current operating environment in relation to CT

80 As can be seen from the legislative history of CT in England and Singapore (at [20]–[33] above), CT was originally devised as a special scheme of punishment targeted at *repeat* offenders. As originally devised, it offered rehabilitative programmes that were "qualitatively" different from those offered to regular prison inmates. Mr Foo's submissions (which Mr Choh adopts) point out that in the current operating environment, there are no longer any "*qualitative*" differences in the rehabilitative programmes available to regular prison inmates as opposed to CT inmates. Mr Foo's submissions are premised on the information which he obtained from the SPS in the course of preparing his *amicus* brief. The SPS's evidence in these Appeals, which suggests that compared to a regular prison inmate, a CT inmate has neither a better nor a worse chance of being found eligible for rehabilitation programmes while he is in prison (see [40] above), also seems to suggest the same.

81 At the hearing before us, the learned Deputy Public Prosecutor, Mr Mohamed Faizal ("Mr Faizal"), accepted that there is no longer any "qualitative" difference between CT and regular imprisonment because: (a) the same programmes that aid in rehabilitation are available to *all* prison inmates; and (b) CT inmates are subject to the same regime as regular prison

inmates. In light of the SPS's evidence and the Prosecution's position, we are, as we stated earlier at [17(a)] above, satisfied that in the present operating environment, there are no "*qualitative*" differences between the rehabilitative programmes available to regular prison inmates and those available to CT inmates, and, more broadly, between the CT regime and regular imprisonment as a whole.

82 However, as pointed out by the parties and the *amici curiae*, there remains a *quantitative* difference between CT and regular imprisonment. This arises in two ways. First, under s 304(1) of the CPC, the minimum term of CT that the court may impose is a period of five years. This is without regard to the nature of the underlying offence. Often, this minimum five-year term will be appreciably longer than the term of regular imprisonment that would otherwise likely be imposed for the underlying offence.

83 Second, we accept the Prosecution's submissions that the existence of remission, virtually as a matter of right for most regular prison inmates, gives rise to a further material quantitative difference between regular imprisonment and CT, under which there is no such *right* to remission. While we recognise the argument advanced by the *amici curiae* (see [57(b)] above) that the availability of remission for a regular prison inmate has to be viewed in light of the CRS (and, where applicable, the MAS) and its similarities with the ROL scheme for CT inmates, in our judgment, despite these similarities, CT and regular imprisonment remain materially different in one critical respect. Almost *all* inmates serving a term of regular imprisonment will qualify for remission; as against this, only about a quarter (25%) of CT inmates will qualify for ROL (see the SPS's evidence at [41] above), which remains a discretionary scheme.

The sentencing framework to be adopted in cases involving CT

84 In this light, we turn to set out the sentencing framework that should be adopted when considering cases involving CT. We find it expedient to deal with the Court's Questions at the same time in the course of setting out this sentencing framework. As we made clear during the hearing, in so far as CT finds expression in the CPC, which is an Act of Parliament, the court is not entitled to ignore its existence. In this regard, we find it apposite to reiterate the well-known maxim of Lord Scarman in *Duport Steels Ltd and others v Sirs and others* [1980] 1 WLR 142 (at 168) that "Parliament makes, and un-makes, the law: the judge's duty is to interpret and apply the law". Where Parliament has enacted a law, it is the court's task to interpret and apply it.

85 However, it is equally the court's task to make sense of CT in light of the changes in its operating environment brought about by the introduction of the MAS and the CRS, as well as the developments that have led to the absence of "qualitative" differences between CT and regular imprisonment. These are changes which the court cannot disregard, and they must be taken on board in the course of its consideration of whether it is "expedient" to impose a sentence of CT. To account for these changes in the operating environment, we have built analytical steps within the sentencing framework. We elaborate on this below.

Stage 1: Does the offender satisfy the technical requirements for CT to be imposed?

86 We accept Mr Faizal's submission that the first step of the inquiry in every case must always be for the court to ascertain whether the offender satisfies the technical requirements for CT to be imposed. These technical requirements are set out in s 304(1) of the CPC (see [35] above).

Stage 2: Is it expedient to sentence the offender to CT with a view to his reformation and the prevention of crime?

87 Once the technical requirements in s 304(1) of the CPC are found to have been fulfilled, the court should then consider whether it is "*expedient with a view to [the offender's] reformation and the prevention of crime*" [emphasis added] that he be sentenced to CT. In response to Mr Faizal's oral submissions, which appear to suggest that crime prevention alone can sustain a sentence of CT, we consider that the two considerations which are stated in s 304(1) of the CPC – namely: (a) reformation of the offender; and (b) the prevention of crime – must be taken together. In other words, the object of preventing crime *alone* would not afford a sufficient basis for the court to impose CT *unless it is also satisfied* that the longer term of incarceration mandated under the CT regime would be expedient for the offender's reformation. A focus on crime prevention *alone* would in fact result in the CT regime being virtually indistinguishable from the PD regime, under which (assuming the offender satisfies the technical requirements set out in s 304(2) of the CPC) PD is to be imposed where it is "expedient for the protection of the public" to do so.

88 We now turn to briefly consider the case law in relation to the question of whether it is expedient to impose a sentence of CT.

89 At the outset, it should be noted that some of the past precedents appear to rest on the premise that CT provides a *separate* regime of training. In *Kua Hoon Chua v Public Prosecutor* [1995] 2 SLR(R) 1, for instance, Yong Pung How CJ noted as follows (at [6]):

> … [T]he principal aim of [CT] is to turn an offender away from the easy allure of crime by *putting him through a regime of discipline* and by *providing him with certain work skills*. [emphasis added]

90 Similarly, in *Public Prosecutor v Mahat bin Salim* [2005] 3 SLR(R) 104 ("*Mahat*"), the court opined (at [13]) that CT was imposed to turn an offender "away from the easy allure of crime by putting him through a regime of discipline and by teaching him certain work skills".

91 More recently, the High Court in *Ng Kim Hong* endorsed the position in *Mahat* and stated (at [20]) as follows:

> … *[T]he more regimented environment in a CT term would, in my view, have a better chance of successfully reversing the Respondent's criminal tendencies as compared to an imprisonment term.* The CT regime has a significant aspect of *helping the offender develop work skills, with also a focus on character, discipline, values, and personal responsibility.* I noted that the Respondent did not seem to lack work skills. He had no difficulty securing gainful employment and maintaining it for more than a year each time he was released from custody. Hence, in the present case, considerations as to the usefulness of learning work skills in a CT term would carry less weight. Nevertheless, the other aspects of the CT regime, in particular, the focus on character-building, discipline, and values, are equally (if not more) significant and therefore weighed heavily in my assessment of the appropriate sentence. [emphasis added]

92 We note too that in *G Ravichander v Public Prosecutor* [2002] 2 SLR(R) 665 (at [18]), the court considered that the principal aim of CT was "to reform the prisoner who is sentenced to undergo that regime". In that case, Yong CJ also opined (at [26]) that the amount of time required for reform was a central consideration in deciding whether a sentence of CT should be imposed:

> More importantly, when sentencing a person to corrective training, normal sentencing principles such as the gravity of the offence, tariffs, mitigating and aggravating factors, while still relevant, do not take centre stage. Rather, the critical factor to be considered is the amount of time that the court feels is required to enable real reform to be attempted. …

93 Given the developments that have been outlined at [80]–[83] above, especially the absence of any "qualitative" difference between CT and regular imprisonment today, we consider that the previously-decided cases on CT must be viewed with circumspection in so far as they place reliance upon the understanding that there is a "qualitative" difference in this regard. Based on the evidence that was adduced by the SPS and the position advanced by the Prosecution, we consider that the principal difference between CT and regular imprisonment today is the fact that CT entails a mandatory *minimum* of five years' incarceration for the offender and does not carry an automatic right to remission. This becomes relevant in circumstances where the sentence of regular imprisonment that would likely be imposed on the offender for the underlying offence is appreciably shorter than the minimum statutorily-prescribed term of CT. At the same time, as Mr Foo has observed, this would bring to the fore the question of the role of proportionality in the court's analysis of the "expedien[cy]" of imposing CT.

94 Before we turn to the question of proportionality, it is important to ascertain the justification for the court to exceed the usual sentencing range for the underlying offence concerned and choose to impose CT instead. In this regard, we note that aside from regular imprisonment, there are three other separate incarceration regimes that apply in Singapore, namely, RT, CT and PD. In respect of each of these regimes, the court's sentencing consideration is driven by factors other than, or in addition to those that normally inform the determination of the length of a term of regular imprisonment.

95 RT, as noted in *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 at ([63]), is aimed at rehabilitating young offenders within a rigorous and structured environment. A specific programme is deployed to this end, and it lasts for at least 18 months (see reg 3(2) of the Criminal Procedure Code

(Reformative Training) Regulations 2010 (S 802/2010)). Therefore, even if the minimum incarceration period of 18 months might not be proportionate to the underlying offence committed by the young offender, the principle of proportionality *legitimately takes a back seat* with a view to reforming the young offender and deterring him at an early stage. Rehabilitation of a young offender therefore provides the operative justification for RT.

96 However, as was noted in *Public Prosecutor v Saiful Rizam bin Assim and other appeals* [2014] 2 SLR 495 ("*Saiful Rizam*") at [41], even though rehabilitation is a valuable sentencing goal and, often, a paramount consideration in the context of young offenders, it is imperative that there remains a *measure of proportionality* in making RT orders so that these offenders are not unduly punished. In *Saiful Rizam*, although Chao Hick Tin JA considered that RT should have been imposed at first instance instead of a term of regular imprisonment, he held that it would be disproportionate to impose RT on appeal because by then, the offenders concerned had already served most of their respective terms of imprisonment, and this would not be taken into account if RT sentences were to be imposed instead. Essentially, the same considerations prompted the High Court to dismiss the Prosecution's appeal against sentence in *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649.

97 In the context of PD, general deterrence and the social value in keeping a hardened criminal out of circulation provide a legitimate basis and operative justification for the application of this regime. Thus, we consider that considerations of proportionality would not apply rigorously in such circumstances. Here too, these considerations would have limited scope for displacing the imposition of a term of PD where such a sentence would otherwise be warranted. However, we reject the notion that it has no

application whatsoever. We note that in *Tan Ngin Hai v Public Prosecutor* [2001] 2 SLR(R) 152, the offender was sentenced to eight years' PD for stealing coins amounting to $1.10 from a van. The court considered it appropriate to do so because it was satisfied that it was "dealing with" an offender who was "deeply" entrenched in the criminal way of life, as could be seen from his past convictions. With great respect, we find ourselves unable to endorse the view that the principle of proportionality is so wholly to be disregarded that incarceration for such duration can fairly be justified for the theft of a few coins.

98 The technical requirements for the imposition of CT – specifically, the stipulation in s 304(1) of the CPC that the offender must have a previous conviction or convictions (as the case may be) for "an offence punishable with imprisonment for 2 years or more" – reveal, in our judgment, that the operative justification for CT is specific deterrence and the reformation of the offender. The question before the court, therefore, is whether these interests of specific deterrence and reformation warrant the imposition of CT. In our judgment, while proportionality remains a relevant consideration in this analysis, it should be applied in an attenuated manner such that the court may *decline* to impose CT if to do so would be *unduly disproportionate*, having regard to all the relevant circumstances. We consider that this can be done by adopting a three-step framework at the second stage of sentencing, which we now elaborate on.

Step 1: What is the imprisonment term that would likely be imposed on the offender for the underlying offence?

99 Because the primary relevance of CT is that it enables the court to impose a longer term of incarceration than what would likely be the case if the offender were sentenced to regular imprisonment, we agree with Mr Foo's

submission (see [58(b)] above) that the court should first consider the imprisonment term that would likely apply to the offender in the circumstances of the case before it turns to consider whether it is expedient to impose CT instead. The point here is that the sentencing court must consider whether regular imprisonment alone would suffice, as well as have a clear basis for assessing whether the imposition of CT would result in punishment that is unduly onerous. In this regard, we note that the Prosecution too accepts that the court should have regard to the term of regular imprisonment which would otherwise likely be imposed on the offender. However, we emphasise that this does not involve just a tabulation of the *tariff* sentence for the underlying offence in question. Instead, the court should consider the sentence that it would actually impose for that offence if it decides not to sentence the offender to CT. In this regard, the court should take into account the following:

(a) The principle of escalation could justify a *longer* imprisonment term being imposed on a persistent offender in light of his antecedents (see *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [14]). This may be especially significant if a subsequent sentence for an offender who has already committed the same sort of offence needs to be escalated in order to specifically deter him from committing further offences of that nature (see *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [43] and *Public Prosecutor v Ng Bee Ling Lana* [1992] 1 SLR(R) 448 at [13]).

(b) Further, as noted in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 (at [81(j)]), in respect of an offender who is convicted of and sentenced to imprisonment for two or more distinct offences at the same trial, the court should, in exceptional

> cases, consider whether more than two sentences should be ordered to run consecutively. This will be especially relevant where the offender is shown to be a persistent or habitual offender, where there are extraordinary cumulative aggravating factors, or where there is a particular public interest. For convenience, we refer to this as "the consecutive sentence exception".

The net result of these two points is that they may well result in a longer aggregate imprisonment sentence than the tariff sentence for the underlying offence in question.

Step 2: Would the MAS apply to the offender if he were sentenced to regular imprisonment?

100 By reason of s 304(1) of the CPC, the court must consider the expediency of imposing a CT sentence having regard both to the offender's reformation and to the prevention of crime. One relevant consideration that would hitherto have existed, amongst the melange of factors analysed by the court prior to the amendments made by the Prisons (Amendment) Act 2014, would be the fact that a sentence of regular imprisonment would come with remission, but without any "step down" mechanism designed to reintegrate the offender into society. This consideration has now been significantly watered down by the introduction of the MAS in relation to offenders who are regarded as having a higher risk of reoffending. The introduction of this scheme has also brought to the fore the fact that rehabilitative programmes are commendably and intrinsically embedded in the imprisonment regime in general.

101 We accept Ms Chia's submission (see [61] above) that the question of whether it is expedient to impose CT should therefore involve a consideration

of whether the offender qualifies for the MAS. We consider that this should form part of the second step in the analysis.

102 If the MAS is applicable and if the court is of the view that it would benefit the offender in question, these factors could cumulatively militate against the imposition of a sentence of CT. We noted earlier that Parliament has recognised that the dual benefits to be derived from the MAS are "the rehabilitation of the offender" and "the protection of the public" (see the extract from *Singapore Parliamentary Debates*, *Official Report* (20 January 2014) vol 91 which we quoted at [47] above). It thus seems to us illogical to exclude CT inmates from the MAS (which brings with it the prospect of rehabilitation and reintegration into society via a structured step-down approach) when the very reason for considering the imposition of CT, in the first place, is that it would lead to reformation of the offender.

Step 3: Would a sentence of CT be unduly disproportionate?

103 If, despite: (a) applying the principle of escalation; (b) imposing two or more consecutive sentences on the offender concerned; and (c) taking account of the rehabilitation opportunities that come with the MAS, the court considers that a longer term of incarceration than the likely term of regular imprisonment is called for to specifically deter the offender, and that this would be preferable for the offender's prospects of reformation, the court should then sentence the offender to CT if it is an available sentencing option. This is because CT is designed to serve the twin goals of reformation and crime prevention. However, the court should be careful to articulate why the imprisonment sentence arrived at upon the application of Step 1 and Step 2 would not suffice, and why a longer term of incarceration is called for on the facts before it.

104 To the extent outlined above, we accept the Prosecution's submission that the test of "expediency" as set out in s 304(1) of the CPC requires the court to balance the relative effectiveness of CT and regular imprisonment as sentencing options, having regard to the interests of the offender's reformation, crime prevention and the need for specific deterrence.

105 Even then, in our judgment, the calibration of a CT sentence should be subject to the principle of proportionality (see [98] above). However, as we mentioned earlier, proportionality in this context applies to an attenuated extent because the court would, by this stage, already have determined that in principle, despite the availability of other sentence enhancement options, an even longer term of incarceration is called for than the term of regular imprisonment which would likely be imposed. In our judgment, this is best effected by incorporating proportionality as a *negating* consideration which would justify *not* imposing CT if the statutorily-prescribed minimum term of CT would result in a period of incarceration that is seriously or unduly disproportionate to the aggregate imprisonment term which has been arrived at in applying Step 1 and Step 2, and which would otherwise likely be imposed. This would typically only cover cases where the minimum term of CT mandated in s 304(1) of the CPC is substantially in excess of the likely imprisonment term for the underlying offence.

106 As we have observed at [17(d)]–[17(e)] above, and for the reasons set out at [107] below, this sentencing consideration bears weight to a greater degree when a *shorter* as opposed to a longer term of CT is contemplated.

107 The analysis of proportionality (and the rehabilitative benefits of the MAS being made available to the offender) may bear little weight when a longer term of CT is called for, since the alternative would be a

correspondingly longer term of imprisonment. Moreover, the emphasis in such cases would likely be on crime prevention and deterrence to a greater degree as a means of securing the reformation of the offender. In fact, in such cases, the court should consider imposing the alternative sentence of PD if the offender qualifies for this and if the court is satisfied that the paramount consideration is the protection of the public.

108 We recognise that the sentencing framework which we have just outlined is likely to reduce the scope for imposing CT sentences. In many cases, the enhancement of sentences of regular imprisonment would suffice; and in many other cases, if the offender is above the age of 30, he may well be found suitable for PD. Nonetheless, in our judgment, this rationalisation is consistent with the present operating environment. In this light, we turn to the issue of whether the sentences imposed on the Appellants are manifestly excessive.

Application of the sentencing framework to these Appeals

109 It is undisputed that the Appellants fulfil the technical requirements for the imposition of CT under s 304(1) of the CPC. Stage 1 has therefore been satisfied. The court should accordingly proceed to the three steps (to the extent applicable) under Stage 2 in relation to each of the Appellants.

Sim

110 Where Sim is concerned, as we pointed out to Mr Faizal, we are unable to agree with the Prosecution's computation of Sim's likely term of regular imprisonment being only 20 months (see Table 6 at [71] above). We set out our analysis of Sim's likely imprisonment sentence in Table 8 below:

Table 8: Sim's likely imprisonment sentence

Offence date	Charge	Likely Sentence
12 May 2014	Theft-in-dwelling	12 months' imprisonment
6 May 2015	Theft-in-dwelling	12 months' imprisonment
6 May 2015	Consumption of a specified drug	18 months' imprisonment
Total maximum sentence		42 months' imprisonment

111 In this regard, we note that the Prosecution has not sufficiently directed its mind to the factors that fall for consideration under Step 1 in relation to the theft-in-dwelling charges. As pointed out by Mr Choh, it is "unrealistic" that Sim would be sentenced to merely one month's imprisonment for each of these charges. Based on the principle of escalation, the sentence for the theft-in-dwelling charges should be at least 12 months' imprisonment for each charge, given that Sim has already received multiple sentences of imprisonment previously for theft-in-dwelling offences, including sentences of 12 months' imprisonment in 2002, ten months' imprisonment in 2003, and more recently, six months' and nine months' imprisonment in 2012 and 2014 respectively (see Sim's Antecedents in Table 2 at [6] above). We note too that the theft-in-dwelling offences in 2012 and 2014 took place after Sim was released in 2009 following five years' CT for the same offence.

112 Given that Sim is a *persistent habitual offender*, as can be seen from his list of antecedents over the years, we consider that it would be appropriate to invoke the consecutive sentence exception and have the sentences for all

three of Sim's Charges run consecutively. Sim would therefore have been sentenced to a period of around 42 months of regular imprisonment.

113 It is accepted by the parties that Sim would qualify for the MAS. On the basis that he is released after serving two-thirds of a 42-month imprisonment term (*ie*, after serving 28 months), Sim would thereafter be eligible for around 14 months of mandatory aftercare pursuant to the MAS. He could then be placed in a "step-down" programme as contemplated under the MAS, such that he might have the opportunity to be rehabilitated and reintegrated into society.

114 In our judgment, having applied the first two steps under Stage 2, we find that a sentence of regular imprisonment (which takes into account the principle of escalation and the consecutive sentence exception) twinned with the MAS would adequately fulfil the dual aims of specifically deterring and rehabilitating Sim. Seen in this light, we consider that the imposition of the minimum term of five years' CT mandated by s 304(1) of the CPC, let alone the seven years that was imposed by the DJ in the court below, is *unduly* disproportionate. We therefore allow MA 9135/2015. We set aside Sim's sentence of seven years' CT and impose a term of 42 months' regular imprisonment on him. We further order that this is to be backdated to 29 May 2015, the date on which he was first remanded.

Loi

115 Turning now to Loi, we broadly agree with the Prosecution's position (set out in Table 7 at [77] above) on the sentence that should be imposed on Loi. In this regard, as we noted earlier, Mr Choh has not substantiated his contention that Loi would otherwise have been sentenced to a term of regular imprisonment of "4.5 years". In our judgment, the sentence suggested by the

Prosecution adequately takes into account the principle of escalation. We set out our analysis of Loi's likely imprisonment sentence in Table 9 below:

Table 9: Loi's likely imprisonment sentence

Offence date(s)	Charge	Likely sentence
19 May 2014, 18 December 2014, 2 March 2015 and 9 March 2015	One count of abetting harassment and three counts of harassment on behalf of an unlicensed moneylender	18 months' imprisonment per charge
12 May 2014 and 2 March 2015	Two counts of failing to report for a urine test	6 months' imprisonment per charge
12 March 2015	Enhanced consumption of a specified drug	3 years' mandatory minimum imprisonment

116 Loi is a *persistent habitual offender*, as can be seen from his list of antecedents over the years. We are of the view that it would have been suitable to order the sentences for two Harassment charges, one Urine Test charge and the drug consumption charge, being a total of four charges, to run consecutively. Loi would therefore have been sentenced to a period of 78 months' regular imprisonment. On this basis, he would have been eligible for 24 months of mandatory aftercare under the MAS after serving 52 months of imprisonment (assuming that it is indeed the case that the MAS is only available for a maximum of two years as suggested by the Parliamentary debates and submitted by the Prosecution (see, respectively, [46] and [62(c)]

above), even though the Prisons Act does not expressly provide a maximum period during which the MAS may be administered).

117 We note that, as the Prosecution has pointed out, Loi committed a staggering total of 173 previous offences in just slightly over a decade, making him a recalcitrant reoffender. We therefore find it necessary to proceed to Step 3 to consider the imposition of CT in his case because we are satisfied that a longer term of incarceration is needed both for the prevention of crime and to specifically deter Loi in the interests of his reformation. Furthermore, the fact that Loi would not be entitled to ROL as of right if he were sentenced to CT would enhance the prospect of specifically deterring him.

118 In the present case, we would have been prepared to find that *at least* six years' CT should have been imposed on Loi because of the extent of his criminal record and the evident need for him to be specifically deterred. In this regard, we are inclined to agree with the Prosecution's submission (which Mr Choh too appears to accept) that but for Loi's age, PD, which carries a minimum term of seven years (see s 304(2) of the CPC), could have been imposed on him.

119 However, the Prosecution has not appealed against the DJ's decision in this respect, and we therefore have not heard Loi on this issue. We are also mindful of the fact that this is the first time that Loi has been sentenced to caning, and this too might have a salutary effect on him in terms of specific deterrence. Lastly, we consider that although, for the reasons set out at [120]–[121] below, it is open to the court to backdate the commencement date of a CT sentence to take account of time spent in remand, there is no reason for us to do so in Loi's case. In view of the time which Loi has spent in remand, taken together with the term of five years' CT that was imposed by the DJ, it

cannot be said that the sentence imposed on him is manifestly inadequate in all the circumstances. We therefore dismiss MA 9140/2015, but without enhancing the sentence imposed by the DJ.

Backdating of CT sentences

120 Before we conclude this judgment, we touch briefly on Mr Foo's submissions in relation to the backdating of CT sentences (see [59] above). In this regard, Mr Foo has highlighted two District Court cases, namely, *Public Prosecutor v Mohamad Rizuan bin Ibrahim* [2015] SGDC 248 and *Public Prosecutor v Teo Ziqi* [2014] SGDC 291, where the court took into account the period of time spent by the offender in remand in calibrating the length of his CT sentence. In our judgment, it is within the discretion of the court to do so in order to ensure that the aggregate CT sentence reflects the time that the court considers is required to specifically deter and reform the offender. However, we also accept Mr Foo's submission, which Ms Chia adopts, that it would be analytically neater for the court to impose a CT sentence and backdate the commencement date of the sentence as it deems appropriate.

121 For completeness, it may be noted that the Prosecution, on its part, accepts that it is within the discretion of the court to take into account the period of time spent by the offender in remand when it determines the length of the CT sentence to be imposed or whether it wishes to backdate the commencement date of the same. As Mr Foo has pointed out, once it is accepted that there is now no longer any "qualitative" difference between CT and regular imprisonment, there can no justification for not backdating the commencement date of a CT sentence to take account of time spent in remand.

Conclusion

122 For the foregoing reasons, we allow MA 9135/2015 but dismiss MA 9140/2015. We again express our deep gratitude to the *amici curiae*, Mr Foo and Ms Chia, for their very comprehensive and cogent written and oral submissions. We were greatly assisted by each of them, and we commend them for the diligence and care with which they applied themselves as officers of the court.

Sundaresh Menon	Chao Hick Tin	See Kee Oon
Chief Justice	Judge of Appeal	Judicial Commissioner

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