IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 14

Magistrate's Appeal No 9125 of 2018

Between

GCX

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Mandatory Treatment Order] — [Calling of Mandatory Treatment Order suitability report]

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GCX
v
Public Prosecutor

[2019] SGHC 14

High Court — Magistrate's Appeal No 9125 of 2018
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See Kee Oon J:

1 The appellant was convicted in the District Court after pleading guilty to one charge of voluntarily causing hurt pursuant to s 323 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). A separate charge for breaching a Personal Protection Order ("PPO") punishable under s 65(8) of the Women's Charter (Cap 353, 2009 Rev Ed) was also taken into consideration for the purposes of sentencing. Both charges arose out of a single incident at the appellant's home where he assaulted his former wife, causing her to suffer multiple injuries. The appellant was sentenced to 12 weeks' imprisonment on the proceeded charge under s 323 of the Penal Code.

2 The appellant appealed against his sentence. In his Petition of Appeal, the appellant identified two grounds of appeal. The first ground was that the District Judge erred in failing to call for a Mandatory Treatment Order ("MTO") suitability report. In so doing, the District Judge had failed to properly assess

and appreciate the facts, circumstances, and psychiatric report tendered before her. The second was that the sentence of 12 weeks' imprisonment was manifestly excessive and unreasonable in consideration of the facts, circumstances and psychiatric condition of the appellant. In his submissions before me, however, the appellant only pursued his first ground of appeal, *ie*, the District Judge's failure to call for an MTO suitability report.

3 After hearing submissions on 29 August 2018, I was persuaded that an MTO suitability report should have been called for. Accordingly, I did so and the appellant was sent for a psychiatric assessment at the Institute of Mental Health ("IMH"). The report dated 16 October 2018 ("the MTO Suitability Report") found the appellant suitable for an MTO, and the appellant indicated that he was willing to undergo the medication and treatment programme specified by IMH. Parties returned before me on 5 November 2018 to make further submissions. I was persuaded that an MTO was indeed appropriate. I accordingly allowed the appeal, set aside the appellant's term of imprisonment, and substituted it with an MTO for 24 months.

4 These proceedings raised issues about the MTO regime which have not been previously considered by the High Court, in particular, the question of when an MTO suitability report should be called for. I have therefore decided to set out my reasons in full in this grounds of decision.

Facts

5 The facts described in this section are drawn from the Statement of Facts, which the appellant admitted to without qualification.

6 At the time of the incident, the appellant and the victim resided at an apartment together. They were undergoing divorce proceedings then. Before that, the victim had obtained a PPO from the Family Justice Courts in 2014.

7 On the night of 22 February 2017, the appellant and the victim had gotten into a verbal dispute over the lighting of a prayer lamp. During the argument, the appellant wanted to feed their daughter, who was present in the room, but the victim refused to allow him to do so. The appellant became angry. He hoisted the victim up by her shirt and punched her in the face multiple times, causing her to fall and hit her rib area against a table. The appellant then dragged her by her hair to an area near the door. The victim fainted, and at that point the appellant stopped and called for the police. These actions took place in the presence of their daughter.

8 The paramedics who attended to the victim at the scene assessed her injuries to be life-threatening. The victim was conveyed to Changi General Hospital, where she was examined at the Accident and Emergency Department and then admitted to the Department of General Surgery. Her medical report shows that she suffered the following injuries:

(a) Swelling over her cheeks and upper lip;

(b) Superficial laceration over her upper lip;

(c) Nasal bone fracture;

(d) Left frontal scalp hematoma;

(e) Multiple liver lacerations;

(f) Right 10th rib fracture; and

(g) Contusions over her right and left knees.

9 The victim was discharged from Changi General Hospital on 25 February 2017.

10 The appellant was arrested by the police on 23 February 2017.

11 The appellant was also brought to the IMH for a psychiatric assessment. The IMH psychiatrist, Dr Jerome Goh ("Dr Goh"), produced a report on 8 March 2017 ("the IMH Report"), assessing the appellant to have been suffering from an "adjustment disorder around the time of the offence and presently, secondary to his severe marital problems and impending divorce which has caused him a lot of stress". Dr Goh took the view that the appellant's "adjustment disorder [had] substantially contributed to the offence", and that the appellant "would benefit from ongoing psychiatric follow-up".

Decision below

12 The District Judge's full reasons are set out in the reported grounds of decision in *PP v GCX* [2018] SGDC 130 ("the GD"). I set out a brief summary of her grounds here.

13 The District Judge held that the sentencing principles of general deterrence and retribution should be given precedence in the present case in light of the serious injuries sustained by the victim (at [21] of the GD). The District Judge noted that this was a case involving domestic violence resulting in serious physical injury, and that the courts typically take a strict sentencing position in respect of such offences (at [19]). Further, there was the added dimension of emotional injury suffered by the daughter, who had witnessed the appellant's brutal assault against her mother (at [22]).

14 The District Judge accepted the assessment in the IMH Report that the appellant was suffering from an adjustment disorder at the time of the offence (at [23]). She appreciated that the appellant was therefore under "a lot of stress", as opined by Dr Goh. But she found no evidence that the appellant was still suffering from the adjustment disorder at the time of sentencing on 12 April 2018 (at [24]). Instead, the appellant's adjustment disorder at the time of the offence in February 2017 arose out of the divorce proceedings, which were ongoing at that time. Those proceedings had concluded by the time the matter was before the District Judge. The District Judge therefore concluded that the stressors which gave rise to the disorder had fallen away (at [26]).

15 The District Judge also specifically enquired of the appellant whether he would be inclined to attend a Community Court Conference ("CCC") facilitated by a court psychologist. The appellant declined to attend the CCC. It thus appeared to the District Judge that the appellant was either unwilling to seek treatment, or did not require any treatment (at [24]).

16 In those circumstances, the District Judge saw no reason to call for an MTO suitability report. In her view, the sentencing principles of general deterrence and retribution – grounded on the offence being committed in the familial context, in breach of a PPO, with serious injuries caused to the victim – outweighed any considerations of rehabilitation, especially when the emotional stressors that might have necessitated psychiatric treatment appeared to have fallen away: at [26]. Instead, a custodial sentence was justified.

17 That said, the District Judge gave mitigating weight to the appellant's psychiatric disorder in reducing the term of imprisonment (at [27]). It was also mitigating that the appellant was a first offender who had pleaded guilty to the offence. He was remorseful and, as even the victim accepted, was unlikely to

commit such offences again (at [29]). Mitigating weight was also accorded to the victim's provocation of the appellant (at [29]).

18 Taking into account all the sentencing factors, the District Judge concluded that a term of 12 weeks' imprisonment would be fair and just in the circumstances.

The parties' cases

Appellant's Case

19 The appellant's case was that the District Judge erred in appreciating the material before her, and should have called for an MTO suitability report. The appellant noted that pursuant to s 339(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), three cumulative conditions must be satisfied before a court exercises its discretion to order an MTO: (1) the offender must be suffering from a psychiatric disorder which is susceptible to treatment; (2) the offender is assessed to be suitable for treatment; and (3) the psychiatric condition of the offender must have been one of the contributing factors for his committing the offence.

20 There was no dispute that the appellant was suffering from an adjustment disorder at the time of the offence. The appellant also relied on the IMH Report stating that this disorder had "substantially contributed" to his commission of the offence. According to the appellant, this essentially satisfied the third requirement under s 339(3) CPC that the condition be a contributing factor for the offender's commission of the offence. This alone should have impelled the District Judge at least to have called for an MTO suitability report, instead of rejecting the possibility of rehabilitation under an MTO out of hand.

21 Further, the District Judge erred in appreciating the appellant's need or willingness to receive psychiatric treatment. The District Judge should not have inferred from the mere fact that the appellant did not wish to attend the CCC that he was unwilling to receive psychiatric treatment or that he did not require any treatment. Instead, the very purpose of an MTO suitability report is to assess whether psychiatric treatment is required by the offender and whether he would benefit from it. That assessment must be done by a psychiatrist specialising in the field, and should not have been left to be inferred by the District Judge.

22 When parties returned before me on 5 November 2018, after the MTO Suitability Report had been provided to both parties, the appellant relied heavily on the opinion of the appointed psychiatrist that he was suitable for an MTO. He submitted that an MTO should be substituted for the imprisonment term as rehabilitation was the predominant sentencing consideration in this case.

Prosecution's case

23 The Prosecution advanced two main reasons for objecting to the calling of an MTO suitability report in this appeal. The first was that the District Judge was correct in finding that the sentencing principles of general deterrence and retribution outweighed the principle of rehabilitation in this case. General deterrence typically comes to the fore in cases involving domestic violence, and took on even greater significance here where the appellant had breached the PPO against him. Retribution was also significant in this case given the severity of the victim's injuries, ranging from liver lacerations to nasal and rib fractures. The fact that the appellant had violently assaulted his wife in front of their daughter must also be taken into account. In these circumstances, a community-based sentence was clearly inappropriate.

24 The second was that there was limited scope for an MTO to benefit the appellant, because the stressors underlying the appellant's psychiatric disorder, *ie*, his marital problems, had fallen away. The appellant and the victim had been living together at the time of the offence, and were undergoing divorce proceedings. Those divorce proceedings had since concluded, and the appellant and victim now lived apart from each other. An MTO is aimed at providing long-term treatment targeting an offender's underlying mental disorder so as to prevent future recurrences of the offence. Because the stressors for the appellant's disorder were not extant, there was no likelihood of the offence recurring and therefore no real basis for or utility in an MTO.

25 Further, when parties returned before me after the MTO Suitability Report had been made available to them, the Prosecution submitted that although the appointed psychiatrist had found a substantial contributory link between the appellant's psychiatric illness and his commission of the offence, the psychiatrist had not gone so far as to find a causal link. Without such a causal link, the sentencing principle of rehabilitation did not come to the fore. I address this submission in more detail below.

Issues to be determined

26 Given the appellant's choice not to pursue his second ground of appeal (see [2] above), the issues before me in the appeal were twofold:

(a) First, whether the District Judge erred in failing to call for an MTO suitability report;

(b) Second, if the District Judge had so erred, and if an MTO suitability report was called for and the appellant found suitable for an MTO, whether an MTO should be ordered.

Issue 1: Whether an MTO suitability report should have been called for

The Law

27 The relevant law concerning MTOs is found in s 339 of the CPC, in particular s 339(1) to (4), which I set out in full:

> **Mandatory Treatment Orders**
>
> **339.** – (1) Subject to subsections (2), (3) and (4), where an offender is convicted of an offence, and if the court by or before which he is convicted is satisfied that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may make a mandatory treatment order requiring the offender to undergo psychiatric treatment for a period not exceeding 24 months.
>
> (2) Before making a mandatory treatment order, the court must call for a report to be submitted by an appointed psychiatrist.
>
> (3) A court may make a mandatory treatment order in respect of an offender only if the report submitted by an appointed psychiatrist states that –
>
> (a) the offender is suffering from a psychiatric condition which is susceptible to treatment;
>
> (b) the offender is suitable for the treatment; and
>
> (c) the psychiatric condition of the offender is one of the contributing factors for his committing the offence.
>
> (4) A court must not make a mandatory treatment order in respect of an offender if the report submitted by the appointed psychiatrist states that he is not satisfied with any of the matters referred to in subsection 3(a) to (c).

28 The definition of an "appointed psychiatrist" is also provided in s 335 read with s 339(13) of the CPC. Those provisions read together indicate that an appointed psychiatrist refers to a psychiatrist appointed by the Director of Medical Services.

29 The following was clear from the above provisions. First, an MTO may be ordered *only* if an appointed psychiatrist takes the view that *all* the conditions

in s 339(3) are satisfied. Second, even if the appointed psychiatrist is satisfied that the cumulative conditions in s 339(3) are met, the court retains a discretion whether or not to order an MTO, as s 339(1) provides that the court should order an MTO only if "it is expedient to do so". Third, s 339(1) guides the court in its exercise of the discretion whether or not to order an MTO, by asking the court to "[have] regard to the circumstances, including the nature of the offence and the character of the offender". Fourth, although s 339(1) provides guidance to the court in deciding whether or not to order the MTO, it offers no guidance as to the prior question of whether the court should call for an MTO suitability report. Section 339(2) only provides that the court *must* call for such a report before it can order an MTO.

30 It was therefore necessary to look beyond the face of the legislation itself to identify the principles that should guide the court in deciding whether or not to call for an MTO suitability report. To my mind, this involved a consideration of the *purpose* an MTO serves.

31 The MTO is a type of Community-Based Sentence ("CBS"). It is one of a suite of community-based sentencing options introduced by Parliament via the amendments to the Criminal Procedure Code in 2010, together with other options such as Day Reporting Orders, Community Work Orders, Community Service Orders, and Short Detention Orders. At the second reading of the Criminal Procedure Code Bill 2010 (No 11 of 2010), the Minister moving the Bill, Mr K Shanmugam, the Minister for Law explained the rationale for introducing CBS (see *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422) as follows:

> *Rationale for having new community sentences*
>
> Our sentencing philosophy is aimed at deterrence, prevention, retribution and rehabilitation. A fair sentencing framework is

> one that enables the Court to deliver the correct mix of these four objectives on the specific facts of each case.
>
> CBS gives more flexibility to the courts. Not every offender should be put in prison. CBS targets offences and offenders traditionally viewed by the Courts to be on the rehabilitation end of the spectrum: regulatory offences, offences involving younger accused persons and persons with specific and minor mental conditions. For such cases, it is appropriate to harness the resources of the community. The offender remains gainfully employed and his family benefits from the focused treatment.

32 It was apparent from these comments that CBSs, including MTOs, were introduced to give the courts more tools to respond to the sentencing principle of rehabilitation. It followed from this that an MTO should be ordered where rehabilitation was the dominant sentencing principle on the facts of a particular case. In turn, it followed that an MTO suitability report should be called for only if there was evidence that the offender possessed rehabilitative potential, although it was not obvious from the parliamentary statements alone what the threshold for evaluating that potential should be. Nevertheless, if it was obvious that the offender possessed no rehabilitative potential whatsoever, then any CBS, including an MTO, would be ineffective and inappropriate. The question, then, was how the threshold should be determined.

33 Before turning to address this question, it was first necessary to appreciate that the inquiry into an offender's rehabilitative potential should not take place in a vacuum, with a single-minded focus only on his prospects for rehabilitation, ignoring the presence of other sentencing principles. This was because even at this preliminary stage, there was a need to balance the sentencing principle of rehabilitation with the other principles, such as deterrence, retribution, and prevention. In other words, the assessment of the offender's rehabilitative potential was a relative and comparative exercise, and not one tied to an absolute standard.

34 The Court of Appeal has offered some guidance as to how the sentencing principles of deterrence, retribution, prevention and rehabilitation should be balanced in cases where the offender suffered from a mental disorder at the time he committed the offence. In *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*"), the Court of Appeal set out the relevant principles to guide sentencing of an offender with a mental disorder falling short of unsoundness of mind. Those principles were summarised by the High Court in *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 at [24], which summary was endorsed by the Court of Appeal in its recent decision in *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295 at [59], as follows:

> (a) The existence of a mental disorder on the part of the offender is always a relevant factor in the sentencing process.
>
> (b) The manner and extent of its relevance [depend] on the circumstances of each case, in particular, the nature and severity of the mental disorder.
>
> (c) The element of general deterrence may still be accorded full weight in some circumstances, such as where the mental disorder is not serious or is not causally related to the commission of the offence, and the offence is a serious one.
>
> (d) In spite of the existence of a mental disorder on the part of the accused, specific deterrence may remain relevant in instances where the offence is premeditated or where there is a conscious choice to commit the offence.
>
> (e) If the serious psychiatric condition or mental disorder renders deterrence less effective, where for instance the offender has a significantly impaired ability to appreciate the nature and quality of his actions, then rehabilitation may take precedence.
>
> (f) Even though rehabilitation may be a relevant consideration, it does not necessarily dictate a light sentence. The accused could also be rehabilitated in prison.
>
> (g) Finally, in cases involving particularly heinous or serious offences, even when the accused person is labouring under a serious mental disorder, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation.

35 I recognised that this guidance was not prepared with the scenario at hand in mind. I considered nonetheless that some of the principles put forth by the Court of Appeal were relevant even at the preliminary stage of calling for the MTO suitability report. In particular, the Court's observation in *Kong Peng Yee* at [59(g)] made clear that there could be cases involving particularly heinous or serious offences where considerations of retribution and protection might prevail over the principle of rehabilitation. Thus, even if the offender had some rehabilitative potential, the principle of rehabilitation could be eclipsed by those of retribution and protection, which made it unnecessary even to call for an MTO suitability report. The Court's observation in *Kong Peng Yee* at [59(e)] was also helpful in making clear that rehabilitation takes precedence if the mental disorder renders deterrence less effective (see (e) above). This showed that an offender's rehabilitative potential could only be truly appreciated after weighing the relative significance of rehabilitation against the other sentencing principles.

36 Moreover, the Court of Appeal's guidance was relevant at the preliminary stage of calling for the MTO suitability report because this earlier stage was itself part of the sentencing process. Before the court could order an MTO, an appointed psychiatrist must produce a report pronouncing himself satisfied that the three cumulative conditions in s 339(3) of the CPC are satisfied. And before the appointed psychiatrist could even prepare the report, the court must invite the appointed psychiatrist to do so. The calling of the report was inextricably intertwined with the ordering of the MTO itself.

37 Thus, incorporating the above guidance into the inquiry whether an MTO suitability report should be called for, it became clear that the court should only contemplate calling for an MTO suitability report if there were sufficient facts showing that the offender had *some* rehabilitative potential, and that

rehabilitation would not be completely outweighed by other sentencing considerations.

38 With the above considerations in mind, I now turn to set out how a court should identify the appropriate threshold of rehabilitative potential in determining whether to call for an MTO suitability report. Although the analyses in calling for the MTO suitability report and ordering the MTO itself were related in that both required the court to balance the relevant sentencing principles, they were essentially two stages, one building upon the other, where the principles had to be carefully considered and weighed.

39 At the first or preliminary stage of calling for the MTO suitability report, the balancing inquiry into the various sentencing principles was necessary because, as I have explained above at [32], an MTO should be considered – and the calling of an MTO suitability report contemplated – only if the offender possessed sufficient rehabilitative potential. This balancing exercise, however, would only be *tentative* and *provisional* in nature at this stage. This was because the court lacked sufficient information at this point to fully appreciate and assess the true rehabilitative potential of the offender.

40 At this stage, without the benefit of a psychiatrist's opinion, the court would only have a sense that the offender was potentially suitable for rehabilitation, but it would lack the facts to determine more conclusively whether this really was the case, and further, the extent of that rehabilitative potential. The avenue by which the court would obtain those facts would be the MTO suitability report itself, which would address the necessary questions whether the offender suffered from some psychiatric disorder that contributed to the commission of the offence, and moreover, whether the offender was susceptible to treatment for that disorder: see 339(3) CPC. This information,

with the psychiatrist presumably opining as to the severity of the disorder, the extent to which it contributed to the offence, and the likely avenues for treatment, would allow the court to *fully appreciate* the extent to which rehabilitation as a sentencing principle applied on the facts. Indeed, the report might very well extinguish the notion that the offender had any rehabilitative potential entirely. For example, it might find that the offender's psychiatric condition did not contribute to the offence at all or that the offender's psychiatric condition did contribute to the offence but that he was not susceptible to treatment for it.

41 Further, although at this stage the court would also need to be persuaded that the other sentencing principles did not outweigh the prospect of rehabilitation such that it should be rejected out of hand, it was not necessary that rehabilitation be the *dominant* sentencing principle at this point. In my view, the court would need only to be satisfied that there was a real prospect of rehabilitation and that a sentence targeted at rehabilitation, *ie*, the MTO, might realistically be ordered on the facts.

42 The scenarios I have outlined above pertaining to the first stage of inquiry should be contrasted to that *after* the MTO suitability report has been obtained. At this second stage, assuming the three requirements in s 339(3) are answered affirmatively, the court has to address the question whether an MTO itself should be ordered and undertake a balancing exercise between the various sentencing principles once again. But the court ought by now to have a clearer picture of the relative significance of rehabilitation as a sentencing principle. It would have obtained a firmer footing for the weight it will attribute to rehabilitation, because the MTO suitability report has supplied the key facts and expert opinion necessary to that determination. Similarly, if the report is unfavourable to the offender, the rehabilitative potential the court presumptively

assessed the offender to possess would be extinguished. More pertinently, the court would simply have no power in such a circumstance to order an MTO under law.

43 The key difference between the pre-report stage and the post-report stage, therefore, was the information asymmetry that the court would need to appreciate. That information asymmetry would directly affect the weight the court would give to rehabilitation as a sentencing principle. Therefore, the court should accept that the offender need only satisfy a lower threshold as to his rehabilitative potential before it would be persuaded to call for an MTO suitability report. Conversely, a higher threshold would apply where the court is being asked subsequently to *order* the MTO itself.

44 I would further clarify that not all of the principles identified in *Kong Peng Yee* at [59] would be relevant at the stage of calling for the MTO suitability report. Some of the principles in *Kong Peng Yee* could not be applied unless an MTO suitability report was first obtained. For example, it would be difficult to tell if the element of general deterrence should still be accorded full weight in the case of serious offences where the mental disorder was not causally related to the commission of the offence, without first having a psychiatric assessment identifying whether or not there was such a causal relationship: see *Kong Peng Yee* at [59(c)].

45 I wish to make clear also that it is a report from the appointed psychiatrist which is essential to the court's determination, and not a report prepared by a psychiatrist engaged at the initiative of either party. It is a precondition to the court ordering an MTO that an MTO suitability report prepared by an appointed psychiatrist be obtained: see s 339(2) and (3) of the CPC. Section 339(9) of the CPC provides that the findings made in the MTO suitability report as to whether

the three conditions in s 339(3) of the CPC are satisfied will be "final and conclusive", although elsewhere I have also held that this does not mean that they will be accepted by the court without question: see *Low Gek Hong v Public Prosecutor* [2016] SGHC 69 at [10]-[11]. It was clearly the intent of the legislative scheme that even where the court has the benefit of a separate psychiatric opinion (not prepared by the appointed psychiatrist), primacy must be given to the findings of the appointed psychiatrist in the MTO suitability report. Section 339(7) of the CPC provides that the separate opinion should be submitted to the appointed psychiatrist. Thus, even if the court was referred to a separate psychiatric opinion indicating that the offender had low rehabilitative potential, the court retains the discretion to call for an MTO suitability report.

46 I hasten to note, however, that the appointed psychiatrist's opinion is not determinative of the court's assessment. The appointed psychiatrist's report would not itself give the answer as to whether and to what degree rehabilitation applied as a sentencing principle. This was a legal question for the court to decide. But the basis for that legal determination by the court would be the appointed psychiatrist's report that informed the court as to the nature of the disorder, the extent to which it contributed to the commission of the offence, and the offender's potential for treatment.

47 I now summarise the approach I have laid out above. In my view, in considering whether to call for an MTO suitability report, the court should bear in mind the following. The court should identify and balance the relevant sentencing principles, giving each its appropriate weight. Having done so, the court would have some sense of the offender's rehabilitative potential. The threshold to be met as to the offender's rehabilitative potential before an MTO suitability report would be called for should not be overly restrictive. The court would need to be persuaded that rehabilitation was a real prospect, and that the

other sentencing principles were not so dominant that rehabilitation should be rejected out of hand. This threshold incorporated the principle identified in [59(g)] of *Kong Peng Yee*, which recognised that other sentencing principles might so substantially trump the principle of rehabilitation that it was unnecessary to inquire further into the offender's rehabilitative potential. The determination whether the threshold was met, and correspondingly, whether the scenario contemplated in principle (g) of *Kong Peng Yee* applied, was intensely fact-dependent. The court should bear in mind, however, that it should not lightly find that other sentencing principles so substantially trumped the principle of rehabilitation that there was simply no need to call for the MTO suitability report. This caution was warranted because the court still lacked, at this stage, the necessary facts to apprise itself fully of the offender's true rehabilitative potential.

Did the District Judge err in not calling for an MTO suitability report?

48 I now explain how I applied the approach I have laid out above to the facts of this case.

49 I found that the District Judge had erred in failing to call for an MTO suitability report on the facts of this case. The District Judge correctly identified the sentencing principles of general deterrence and retribution as applying here. The principle of general deterrence was engaged because this offence involved family violence, which cannot be condoned. The principle of retribution also applied in light of the serious injuries suffered by the victim.

50 I considered, however, that the District Judge had erred in balancing the various sentencing principles. The District Judge appeared to have taken the view that the sentencing principles of general deterrence and retribution so outweighed the principle of rehabilitation in the present case that there was no

need to call for an MTO suitability report. But in so doing, she gave insufficient weight to the principle of rehabilitation, and overstated the significance of the principles of general deterrence and retribution.

51 General deterrence certainly applies in cases involving family violence. It is not only the victim who suffers where she is assaulted; her family members suffer too. In this respect, I wholeheartedly endorsed the observations of the District Judge at [22] of her GD that their daughter too was a victim of the offence in the sense that she would have been emotionally affected by having witnessed her father assault her mother. I also agreed with the District Judge that the consideration of general deterrence became all the more acute since the appellant was already subject to a PPO in the instant case. That would have placed him on notice that he was not to use violence on the victim at all.

52 The evidence before the District Judge in the IMH Report was that the appellant was suffering from an adjustment disorder at the time he committed the offence. More pertinently, Dr Goh was of the view that the appellant's adjustment disorder "[had] substantially contributed to the offence". This finding, which was not contested by the Prosecution, substantially reduced the significance of general deterrence as a sentencing principle on these facts.

53 General deterrence may have a lesser role to play where the offender has a mental illness before and during the commission of an offence, and this is particularly so if a causal relationship exists between the mental disorder and the commission of the offence: *Kong Peng Yee* at [69]; see also *Ng So Kuen Connie v Public Prosecutor* [2003] 3 SLR(R) 178 ("*Connie Ng*") at [58] and *Lim Ghim Peow* at [28]. As Chao JA explained in *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [43], this is because general deterrence assumes persons of ordinary emotions, motivations, and impulses who are able to

appreciate the nature and consequences of their actions, and who behave with ordinary rationality and for whom the threat of punishment would be a disincentive to engage in criminal conduct.

54 A person suffering from a mental illness that leaves him unable to appreciate the nature and consequences of his actions will not be deterred by the prospect of a custodial sentence. This appeared to be true of the appellant here; the IMH Report identified a close contributory link between the appellant's adjustment disorder and his commission of the offence. In this regard, it was noteworthy that the victim had also told Dr Goh that the violence the appellant had committed was "out of character" and that he was "not violent by nature". Similarly, it is not the function of general deterrence to make an example of an offender who simply did not possess cognitive normalcy and rationality. Thus, although general deterrence was still relevant given that the offence was one involving family violence, it should not have been given as much weight in the present case.

55 I was also of the view that the District Judge accorded too much weight to the sentencing principle of retribution. The weight to be given to retribution depends on the culpability of the offender: *Kong Peng Yee* at [73] and [75]. Here, the findings of the IMH Report suggested that the appellant bore a lower level of culpability for his actions, although this is not to say he was not culpable at all. He was certainly culpable because the IMH Report did find that he was aware of the nature and quality of his actions.

56 I pause at this point to address the potential objection that the IMH Report was unclear, and that it did not provide sufficient information relating to the appellant's culpability. What was stated in the IMH Report was that the appellant's "adjustment disorder [had] substantially contributed to the offence".

In my view, this would have been sufficient for a court to infer that the offender's culpability must have been reduced. In any event, if there was any doubt as to the extent of the appellant's culpability, the better approach would have been to obtain clarification from the psychiatrist, or by calling for an MTO suitability report.

57 Next, I turn to the District Judge's assessment of the appellant's adjustment disorder. She accepted that he did suffer from an adjustment disorder that contributed to his commission of the offence, and correctly identified that rehabilitation consequently arose as a sentencing consideration in this case: see GD at [25]. However, the District Judge appeared not to have given due weight to the principle of rehabilitation. Several reasons can be discerned from the GD as to why the District Judge apparently took this position. I shall analyse each of these reasons to explain why I differed from her view.

58 The primary reason behind the District Judge's decision appeared to be her doubt that an MTO would be useful given the substantial period of time that had lapsed between the commission of the offence and sentencing. The offence was committed on 22 February 2017, but the appellant was only sentenced more than a year later, on 12 April 2018. The District Judge noted the opinion of Dr Goh that the appellant's adjustment disorder was "secondary to his severe marital problems and impending divorce which has caused him a lot of stress". By the time the matter came for sentencing, however, the appellant's divorce was concluded, and he no longer lived together with the victim: see GD at [25]. This led the District Judge to conclude that the "stressors" which formed the basis for the appellant's psychiatric disorder had fallen away: see GD at [26].

59 I acknowledged that the substantial lapse of time between the commission of the offence and sentencing, and the change in the appellant's

circumstances in that period of time, did intuitively suggest that the appellant's psychiatric disorder might have become less severe. That said, I did not think that the mere effluxion of time *alone* warranted the finding that an MTO would be of no or little use to the appellant. Dr Goh was clearly of the view that the appellant would "benefit from ongoing psychiatric follow-up", and gave the appellant an outpatient appointment for review in a few weeks' time. This suggested that the appellant's adjustment disorder would take some time to be treated, and that rehabilitation would still be relevant as a sentencing consideration.

60 It was also not clear from the IMH Report itself how long this period of treatment would be, and whether the appellant's adjustment disorder necessarily resolved itself upon the conclusion of his divorce proceedings. This was not entirely surprising because Dr Goh was not asked to conduct an assessment for an MTO suitability report but only a general psychiatric evaluation. In these circumstances, I was of the view that the better approach would have been for the District Judge to call for an MTO suitability report to assure herself that the appellant's psychiatric disorder no longer required treatment, and thus an MTO would be ineffective. Calling for an MTO suitability report would not have greatly protracted the proceedings. It was an avenue that the District Judge could – and should – have taken to confirm her view, with the assistance of professional medical assessment, as to the "stressors" having dissipated.

61 I reiterate that the MTO suitability report itself will not be accepted without question, as it is still the role of the court to examine the internal consistency and cogency of the report once produced: see *Low Gek Hong* at [11]. More importantly, the court ultimately has to determine whether the MTO itself should be ordered. But it bears mentioning that calling for an MTO suitability report does not commit the court irrevocably to a decision that an

MTO will be ordered. Instead, the report would help the court to better appreciate the appellant's true rehabilitative potential, if any exists. In these circumstances, I considered that rehabilitation as a sentencing principle had not been so reduced in significance that it was unnecessary to call for an MTO suitability report.

62 I also noted that the District Judge had contrasted the present case with that of *Public Prosecutor v Ng Tong Kok* [2016] SGMC 52 ("*Ng Tong Kok*") in her analysis. The District Judge took the view that the appellant here no longer required treatment or psychiatric follow-up, unlike the offender in *Ng Tong Kok* who was found to still be suffering from his psychiatric disorder at the time of sentencing in that case and in respect of whom an MTO was ultimately ordered: see GD at [26]. In my view, *Ng Tong Kok* was an inexact parallel to this case. *Ng Tong Kok* was a case where an MTO suitability report had *already* been called for, and the court was confronted with the next stage of the analysis, which was whether an MTO ought to be ordered: see [15] and [19]. The crux of the dispute there was not about the prior step of calling of the MTO suitability report itself, as was the case here. Rather, the main issue was whether it was more appropriate to order imprisonment, or to impose an MTO: see [19]. Indeed, it was precisely because an MTO suitability report was called for in *Ng Tong Kok* that the judge was able to know that the offender's psychiatric disorder still persisted even though, as with the present case, the offence had taken place more than a year before the matter came to sentencing: see *Ng Tong Kok* at [17(a)]. The District Judge's reliance on *Ng Tong Kok* was therefore misplaced; if anything, that case might be said to support the appellant's case that an MTO suitability report should still have been called for.

63 The second reason why the District Judge held it unnecessary to call for an MTO suitability report was the fact that the appellant had declined an

invitation to attend a CCC. From this, the District Judge drew two inferences. First, that the appellant was unwilling to seek treatment, and second, that he did not require treatment: GD at [24]–[25]. With respect, I disagreed with these inferences.

64 I shall first address the question of his willingness to seek treatment. An MTO is a form of criminal punishment, and, as with any other criminal punishment, the court was entitled to expect the offender's full compliance with it. The question whether an offender was willing or unwilling to receive the punishment would therefore ordinarily not even feature in the sentencing analysis. I acknowledged, however, that these considerations differed slightly in the context of an MTO. This was because an offender subject to an MTO would not be incarcerated, and may well not be remanded at IMH either, and there therefore could be no guarantee that the offender would attend his treatment sessions at IMH. Indeed, unless the court has ordered that the offender reside in a psychiatric institution during the whole or a specified part of his treatment pursuant to 339(1A) CPC, then, unlike an offender sentenced to imprisonment, an offender sentenced to an MTO would enjoy a much wider liberty of his person which included, most significantly, the absence of physical compulsion to actually attend his treatment sessions. To be clear, however, failure to attend could lead to other penal consequences.

65 The unique features of the MTO regime thus lead to the provision in s 339(5) CPC that the appointed psychiatrist should consider the likelihood of the offender attending treatment sessions for his disorder in determining whether he was suitable for treatment. The psychiatrist *may* take this factor into account in making his recommendation whether the offender was suitable for an MTO or not, although the legislation does not strictly require him to do so.

66 The question which followed was whether, upon the psychiatrist being so satisfied, or if the psychiatrist did not address his mind to it, the court should also look into the factor of the offender's willingness to attend his treatment sessions. I considered that the court was still entitled to do so, because it was ultimately in the court's discretion to determine if it was expedient to order an MTO. Whether the offender would comply with the conditions of his MTO would be relevant to the court's decision to order an MTO, because no court would want to make a decision or order that was futile. The offender's willingness to receive treatment would demonstrate whether he would comply with the MTO, and be a factor in favour of an MTO being ordered. To be clear, however, whether or not the offender had any reservations regarding the MTO's conditions was quite irrelevant to his having to comply with the MTO once the court had ordered it.

67 The offender's willingness to attend his treatment sessions was therefore a relevant factor in the court's determination of whether it was expedient to order an MTO. In my view, however, the wrong inferences were drawn in this case. I did not think it right to infer, merely because the appellant had declined to attend a CCC, that this meant that he would not attend his treatment sessions if he was compelled by law, on pain of criminal punishment, to do so. It seemed to me that these were quite different situations. The appellant's choice to attend a CCC was, after all, an entirely voluntary one. Further, the question whether the appellant wished to attend a CCC was also a different question from that which the appointed psychiatrist might consider under s 339(5) CPC, which was whether the appellant would attend the treatment sessions which are specified by and part of the MTO. The District Judge therefore ought not to have readily drawn the inference that the appellant was unwilling to undergo treatment mandated by an MTO from his decision not to attend the CCC.

68 I turn next to address the District Judge's inference that the appellant no longer required treatment because he declined to attend the CCC. I also considered this inference to have been wrongly drawn, for two reasons.

69 First, the question whether an offender requires treatment is a matter for objective medical assessment. It cannot simply be inferred by the subjective choice of an offender whether or not to attend a CCC.

70 Second, a CCC is not a substitute for psychiatric treatment or psychiatric assessment. A CCC involves assessment by a team of psychologists, social workers, and counsellors. They may possess specialist skills but they are not trained medical professionals. Psychology and psychiatry are not the same thing; it is a psychiatrist whom Parliament has deemed essential to the operation of s 339 CPC. So it was wrong to infer from the appellant's refusal to attend a CCC that he had refused psychiatric treatment altogether, or did not require such treatment.

71 The third reason why the District Judge found it unnecessary to call for an MTO suitability report was the absence of any evidence before her indicating that the appellant had sought psychiatric treatment: GD at [24]. From this, the District Judge also inferred that the appellant was either unwilling to seek treatment or did not require any. I disagreed with these inferences. I repeat my observations above that the appellant's failure to seek psychiatric treatment when he was under no legal obligation to do so was quite a different matter from the appellant being obliged to receive treatment if he was legally compelled to do so by an MTO.

72 Further, it was not clear to me that simply because the appellant had not sought treatment that he did not need any. It might have been the case that he

could not afford the treatment. Or he might have misguidedly self-diagnosed himself and reached the conclusion that he did not require treatment. As I observed above, the question whether the appellant was susceptible to treatment was a question for objective medical assessment.

73 In sum, I considered that the evidence before the District Judge was sufficient to show that the appellant possessed some rehabilitative potential, and was potentially suitable for an MTO. The competing sentencing principles of retribution and general deterrence did not so overwhelm the principle of rehabilitation that it was plainly unnecessary to call for an MTO suitability report at all. Indeed, the appellant had already been assessed by an IMH psychiatrist to have been suffering from a psychiatric disorder that "substantially contributed" to the offence. This suggested that retribution and general deterrence receded in significance when the various sentencing principles were balanced. Instead, rehabilitation came to the fore. This was not to say that family violence, especially family violence that resulted in such severe injuries as were suffered by the victim in this case, should be condoned. Family violence is always to be condemned. The evidence here was nevertheless sufficient to suggest that the appellant, as a person labouring under a psychiatric disorder at the time he committed the offence, was not someone possessed of his ordinary faculties of mind who deliberately and consciously attacked his victim. It was fair to recognise that the appellant was potentially an offender who might be rehabilitated.

74 I concluded that the reasons put forward by the District Judge did not fatally undermine the consideration that the appellant was potentially suitable for rehabilitation under an MTO. I therefore called for an MTO suitability report after hearing the parties' submissions on 29 August 2018.

Issue 2: Whether an MTO should be ordered

75 The MTO Suitability Report was prepared by Dr Goh, who concluded that the appellant was suitable for an MTO. Dr Goh confirmed his view, as expressed in the IMH Report, that the appellant suffered from an adjustment disorder around the time of the offence, "secondary to his marital problems and impending divorce", and this "condition had substantially contributed to the commission of an offence". Dr Goh also noted that the appellant was willing to comply with the requirements of an MTO, and that the appellant's mother was willing to monitor and supervise his treatment if needed. Dr Goh recommended that the appellant be placed under an MTO for a duration of 24 months.

76 The Prosecution maintained its objections to an MTO. It was submitted that although the MTO Suitability Report had stated that the appellant's adjustment disorder had "substantially contributed" to the commission of the offence, Dr Goh had stopped short of concluding that the adjustment disorder had *caused* the appellant to commit the offence. *Lim Ghim Peow* was cited as authority that rehabilitation only comes to the forefront when there is a causal link between the mental disorder and the commission of the offence. There was no evidence of such a causal link in this case as Dr Goh had not made this express finding. The Prosecution further emphasised that while the appellant suffered from a psychiatric disorder, this was outweighed in significance by the fact that the offence was serious. The paramedics who attended to the victim at the scene assessed her injuries to be life-threatening. Rehabilitation could still take place in prison, and mitigating weight could nevertheless be given to the appellant's psychiatric condition by tempering the length of the prison sentence (as the District Judge had done).

77 I did not accept the Prosecution's objections for three reasons. First, in my judgment, the decision in *Lim Ghim Peow* does not stand for the proposition that rehabilitation as a sentencing principle comes to the forefront only where there is a causal link between the psychiatric disorder and the commission of the offence. It is true that the presence of a causal link is an important factor in the inquiry. The Court of Appeal in *Lim Ghim Peow* at [26], citing *Connie Ng*, stated that the element of general deterrence may be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence, and this was "*particularly so* if there was a *causal link* between the disorder and the commission of the offence" [emphasis added]. Similarly, the Court of Appeal observed at [28] that the element of general deterrence may be accorded full weight where the mental disorder is not serious or is *not causally related* to the commission of the offence, *and* the offence is a serious one. But it also noted the following:

> It is not difficult to understand that the element of general deterrence can readily be given considerably less weight in the case of an offender suffering from a significant mental disorder who commits a minor crime, *particularly if a causal relationship* exists between the mental disorder and the commission of such an offence.
>
> [emphasis added in italics]

78 In both [26] and [28] of *Lim Ghim Peow*, the Court of Appeal was emphasising that the existence of a causal link would add force to the argument that general deterrence should be given less weight. I accepted that it would logically follow that the greater the significance given to deterrence and retribution, the lesser the significance accorded to rehabilitation. But it appeared to me that the comments in *Lim Ghim Peow* did not go so far as to say that rehabilitation could *only* be found to be the dominant sentencing principle *if there was a causal link* between the mental disorder and the commission of the offence. Instead, whether rehabilitation was the dominant sentencing principle

or not would involve finding the "right balance" between the various sentencing considerations: *Lim Ghim Peow* at [39].

79 This leads to my second observation. I appreciated that the words "causal link" or other similar words were not used by Dr Goh in the MTO Suitability Report. But Dr Goh had in fact already gone beyond what s 339(3) CPC required of him. Dr Goh was required by s 339(3)(*c*) CPC to state whether he was satisfied that the "psychiatric condition of the offender [was] one of the contributing factors for his committing the offence". It would therefore have sufficed for him to say that the appellant's adjustment disorder was a contributing factor towards the appellant's commission of the offence. Dr Goh, however, went one important step further by stating that the adjustment disorder "substantially contributed" to the commission of the offence. This, to my mind, could only be understood to mean that the disorder was clearly and sufficiently contributory to the appellant's commission of the offence, even if it may not have been a "but for" cause.

80 Third, I was not persuaded that a causal link must be shown before an MTO can be ordered, because the legislative scheme in s 339 had imposed no such requirement. If Parliament had intended that an MTO could only be ordered if a causal link – which I assume to mean a "but for" causal link – was found, Parliament could easily have provided for this. Instead, Parliament only required that the appointed psychiatrist be satisfied that the psychiatric condition of the offender was "one of the contributing factors" for the offender having committed the offence. The appellant plainly met this requirement. If the Prosecution's submissions were accepted, the court might have to call for yet another report specifically asking the psychiatrist to state his view on the causal relationship between the psychiatric disorder and the commission of the offence, when the statute did not require him to state so.

81 For these reasons, I determined that it was unnecessary for a causal link to be shown between the appellant's adjustment disorder and his commission of the offence before an MTO could be ordered.

82 Simply having the psychiatrist's report in the appellant's favour, however, was not conclusive of the court's *legal* determination whether it was expedient that an MTO be ordered. Instead, as I have pointed out above, the various sentencing considerations had to be balanced again. I therefore considered the respective roles of deterrence, retribution, rehabilitation, and protection in this case once again.

83 In my view, the principles of deterrence and retribution did recede in significance in this case because it was clear, by virtue of the MTO Suitability Report, that the appellant was suffering from an adjustment disorder that played a significant role in his commission of the offence. The MTO Suitability Report also indicated that the appellant would be susceptible to treatment. Moreover, Dr Goh had recommended that the treatment take place over 24 months. This militated against ordering imprisonment and having the appellant rehabilitated in prison instead, because the appropriate term of imprisonment, if imprisonment had been ordered, would not have been so long as to allow for meaningful medical intervention. This therefore suggested that treatment via an MTO, and not imprisonment, was a better response. Further, although the appellant's actions were serious, and deterrence and retribution both significant, I considered that this was not a case where rehabilitation had such diminished importance that it was outweighed by deterrence and retribution.

84 I also found myself fortified in my conclusion that an MTO was appropriate because of the strong familial support shown by the appellant's

mother. She was very supportive of him, and stood willing to monitor and supervise the appellant's treatment under the MTO.

85 In these circumstances, I was persuaded that rehabilitation was indeed the dominant sentencing principle. An MTO was therefore the appropriate sentencing option.

Conclusion

86 For the foregoing reasons, I allowed the appeal and substituted the appellant's sentence of imprisonment with an MTO for a period of 24 months.

See Kee Oon
Judge

Peter Keith Fernando (M/s Leo Fernando) for the appellant;
Tan Wee Hao and Shana Poon (Attorney-General's Chambers) for the respondent.