Public Prosecutor
v
Chow Chian Yow Joseph Brian

[2016] SGHC 18

High Court — Magistrate's Appeal No 27 of 2015
Chan Seng Onn J
23 October 2015

Criminal law — Armed forces offences

Criminal procedure and sentencing — Sentencing — Benchmark sentences

11 February 2016 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Each citizen has a duty to do his fair share to sustain social arrangements from which all benefit. Parliament is to determine the nature and content of this duty, and the law is justified in using coercive power when necessary to ensure the performance of this duty ("the fair share argument").

2 In relation to the fair share argument, one can draft as an ally the 19th century economic and moral theorist John Stuart Mill ("Mill"). In *On Liberty*, Mill states as follows:

> [E]veryone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain

> line of conduct toward the rest. This conduct consists, first, in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights; and *secondly, in each person's bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing at all costs to those who endeavor to withhold fulfillment.*
>
> [emphasis added]

3 National Service ("NS") has been the cornerstone of Singapore's defence and security since 1967. NS is about each Singaporean male citizen performing *his fair share* towards Singapore's national defence, regardless of his background or circumstances to defend his country and its members. It is fixed on an equitable principle: *universality*. To uphold the principle of universality, Parliament has pursuant to the Enlistment Act (Cap 93, 2001 Rev Ed) ("the Act") made NS obligations apply to all eligible Singaporean males and set out sanctions to be applied against individuals who attempt to evade those obligations under the Act.

4 The present appeal is brought by the Public Prosecutor ("Prosecution") against the sentence imposed on the respondent, Chow Chian Yow, Joseph Brian, for remaining outside of Singapore without a valid exit permit ("VEP"), an offence under s 32(1) and punishable under s 33(*b*) of the Act. The respondent remained outside Singapore without a VEP from 13 April 2007 to 10 May 2013, for a period of six years and 27 days (both dates inclusive). The respondent pleaded guilty to the offence on 13 January 2015 and was sentenced to a fine of $4,500 on 4 February 2015 by a District Judge ("the DJ"). The DJ's grounds of decision can be found at *Public Prosecutor v Chow Chian Yow, Brian Joseph* [2015] SGDC 97 ("the DJ's GD"). The Prosecution brings this

appeal on the basis that the sentence imposed on the respondent is *manifestly inadequate*.

Background

5 The respondent is a 24 year old male. He is a Singaporean citizen by birth. In 2005, before turning 15 years old, the respondent left Singapore for Australia to pursue a foundation programme ("the foundation programme"). It was highlighted in the court below that respondent left Singapore as the local education system was inadequately equipped to deal with his attention deficit disorder ("ADD"). The respondent had prior to his departure completed his primary and some part of his secondary education under the local education system. After his initial journey to Australia in 2005, the respondent flew in and out of Singapore.

6 The respondent last left Singapore on 20 January 2007 when he was already 16 years old. On 13 April 2007, the respondent turned 16 years and six months old. He thus became liable to register for a VEP to remain outside Singapore. The respondent did not register for or obtain a VEP.

7 On 7 January 2008, the Central Manpower Branch ("the CMPB") sent a notice to the respondent's registered address in Singapore informing him of his obligation to register for NS. A further reporting order was issued to the respondent on 22 February 2008. Slightly before the further reporting order was issued, a letter from the Deputy Principal of Murdoch College Australia dated 14 February 2008 was sent to the CMPB informing it that the respondent was

in the final year of the foundation programme and would be granted an offer to start university in February 2009 if he was successful.[1]

8 On 17 April 2008, the CMPB sent a letter to the respondent's registered address in Singapore stating that he had to report to the CMPB on 6 May 2008 for NS registration. The letter also stated that the CMPB was prepared to grant the respondent a deferment from full-time NS to complete the foundation programme, provided a bond in the form of a bank guarantee was furnished to the Ministry of Defence ("the MINDEF"). It was also stated in the letter in no uncertain terms that the offer for deferment only extended to the foundation programme and not the university course. After issuing a further reporting order on 7 May 2008, investigation officers from the MINDEF ("the MINDEF IOs") visited the respondent's Singapore address and informed a lady, who identified herself to be the respondent's grandmother, that the respondent had to report to the CMPB by 5 August 2008 (this reporting order together with those issued from and including 17 April 2008 shall be hereinafter collectively referred to as "the Reporting Orders"). The respondent's grandmother informed the MINDEF IOs that she would relay the message to the respondent's parents.

9 After the respondent failed to report to the CMPB in accordance with the Reporting Orders, a Police Gazette cum Blacklist was raised against him on 28 August 2008. Almost seven months later, on 16 March 2009, the respondent emailed the CMPB attaching a letter from the University of Western Australia ("UWA") confirming his enrolment into the four-year Bachelor of Engineering degree course in UWA.[2] He belatedly informed the CMPB that he was admitted

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[1] Statement of Facts, ROP Bundle, p 6.

[2] Statement of Facts, ROP Bundle, p 7.

into the UWA and sought advice on deferring his NS obligations. The CMPB responded on 21 April 2009 via letter (and by an email dated 23 April 2009 attaching the said letter). It narrated, *inter alia*, the contents of the Reporting Orders and the visit by the MINDEF IOs to the respondent's Singapore residence. The CMPB then informed the respondent that he had committed an offence by not responding to the Reporting Orders and advised him to return to Singapore to resolve his NS offences.

10 The respondent replied to the CMPB on 22 May 2009 via letter. He communicated that he was unware of the Reporting Orders or the visit by the MINDEF IOs and repeated his earlier request for advice on deferment. The CMPB replied to the respondent's letter via email. In the reply, the CMPB stated that the respondent was not eligible for deferment from full-time NS to complete the university course. Therefore, the CMPB advised him to return to Singapore to resolve his NS offences as soon as possible.

11 The respondent did not reply to the CMPB's email. The respondent suggested in the court below that he did not receive the email as he "changed his computer". This argument is spurious for a reason so obvious: the change of a computer does not destroy emails that are stored in a server hosted by the email service provider.

12 On 9 April 2013, the respondent informed the CMPB via email that he had completed his university education and that he was waiting for his passport to be renewed so that he could return to Singapore. He then informed the CMPB on 7 May 2013 that he would voluntarily surrender on 11 May 2013 to fulfil his NS obligations, which he had until that point evaded. On 13 May 2013, the

respondent reported at the CMPB. He was thus absent without a VEP from 13 April 2007 to 10 May 2013 *ie*, six years and 27 days.

13 The respondent enlisted for NS on 7 November 2013. I note that he performed exceptionally well during his Basic Military Training ("BMT") and was sent to command school, namely Specialist Cadet School ("SCS"). He is now a Reconnaissance Instructor with the Combat Intelligence School ("CIS") in MINDEF. I note from the testimonials before me, which were penned by the respondent's commanders, that his performance throughout his full-time NS was exceptional.

The decision below

14 As noted at [4] above, the DJ sentenced the respondent to a fine of $4,500. In imposing the fine, the DJ made the following points:

(a) The respondent left Singapore because the local education system was ill-equipped to deal with his condition of ADD, and there was no evidence that the respondent left Singapore to evade NS (see the DJ's GD at [36]);

(b) A fine would not be inappropriate if an offender voluntarily returns to Singapore to fulfil his NS obligations at an age when the majority of Singaporean males fulfil theirs (see the DJ's GD at [39]);

(c) While the respondent had gained an advantage over his peers by completing his university education before fulfilling his national service obligations, this was insufficient in itself to conclude that a custodial sentence was warranted (see the DJ's GD at [42]); and

(d) The respondent through his exceptional performance while in NS had made a significant contribution towards national defence and this should be recognised (see the DJ's GD at [45]).

15 I reproduce in full certain observations made in the DJ's GD on the factors that should be considered in the imposition of a custodial sentence:

> 33 Whilst the period of default may play a part in the final sentence imposed by the Court, but by itself, it is not the sole factor determining sentence. In ***Seow Wei Sin*** at [33], the appellate court was of the view that:
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> > *The seriousness of an offence under the Act should not be determined purely on the length of the period of default. This would be quite unjust. I would have thought equally important, if not more, must be in the circumstances surrounding the default …*
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> 34 In the instant case, if the Prosecution was relying on the length of the accused's period of default as the basis of their submission that a custodial sentence should be imposed, the very least that should have been done was to articulate the reasons why this was so. Regretfully, no attempt was made by the Prosecution to address the court on this or any other factors.
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> 35 Generally speaking, it would appear that, where the period of default is short, the usual sentence is that of a fine or, where the circumstances warrants, even probation. Even where the default period was much longer than two years, fines have generally been imposed unless there were aggravating factors. In the instant case, the period of default was about 6 years and 1 month. From the precedent cases set out above, it would appear that a fine, rather than a custodial would not be inappropriate. However, even if the Prosecution did not, it would be best to look at the other factors surrounding the default.
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> [emphasis in italics and bold italics in original]

Prosecution's submissions on appeal

16 The Prosecution takes the position in this appeal that a custodial sentence of no less than three months' imprisonment should be imposed on the

respondent. In support of its position, the Prosecution makes the following points:

(a) A ministerial statement made in Parliament in 2006 by Mr Teo Chee Hean, then Minister of Defence ("the Ministerial Statement") and its consideration by the High Court in *Mohammed Ibrahim s/o Hamzah v Public Prosecutor* [2015] 1 SLR 1081 ("*Mohammed Ibrahim v PP*") make clear that general deterrence is a significant factor in deciding on an appropriate sentence. The DJ did not give sufficient weight to general deterrence in imposing a fine on the respondent.

(b) There is disparity between the sentences imposed for cases prosecuted under the Act and those relating to absence without leave ("AWOL") of NS personnel with analogous facts. The sentences imposed under the Act should be aligned to that of the AWOL cases. In this regard, the benchmark sentence for an offender who remains outside of Singapore without a VEP for more than two years should be four months' imprisonment.

(c) A distinction should be made between cases where the offenders have a strong connection to Singapore and enjoyed the benefits of citizenship before their departure and cases where the offenders are connected to Singapore only by reason of being born here. The imposition of fines may be justified in the latter category.

(d) Though the respondent's defiance of the CMPB's communications that he was not eligible for deferment is an aggravating factor, the respondent's voluntary surrender and good character, as

demonstrated by his positive performance while in NS are mitigating factors.

Respondent's submissions on appeal

17 The respondent's position on appeal is as follows:

(a) The Prosecution has failed to show why the weight given by the DJ to the sentencing factor of general deterrence is insufficient.

(b) The AWOL cases cannot provide guidance on sentences that should be imposed under the Act as the AWOL cases are the subject of military law that is administered pursuant to the Singapore Armed Forces Act (Cap 295, 2000 Rev Ed) ("the SAF Act").

(c) The aggravating and mitigating factors in this case have been well-balanced by the DJ.

(d) The points made in (a) – (c) above cumulatively suggest that the DJ had correctly sentenced the respondent to a fine of $4,500, and the present appeal should accordingly be dismissed.

My decision

18 The relevant provisions in the Act that are relevant to the present appeal are set out below:

> **Exit permits**
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> 32.—(1) A person subject to this Act who has been registered under section 3 or is deemed to be registered or is liable to register under this Act, or a relevant child, shall not leave Singapore or remain outside Singapore unless he is in possession of a valid permit (referred to in this Act as exit permit) issued by the proper authority permitting him to do so.

> …
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> **Offences**
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> 33. Except as provided in section 32(3) and (4), any person within or outside Singapore who —
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> …
>
> (*b*) fails to fulfil any liability imposed on him under this Act;
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> …
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> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

19 It is also pertinent to set out the provisions that define who "[a] person subject to [the] Act" would be:

> **Interpretation**
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> 2. In this Act, unless the context otherwise requires —
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> …
>
> "person subject to this Act" means a person who is a citizen of Singapore or a permanent resident thereof and who is not less than 16 years and 6 months of age and not more than 40 years of age or, in the case of a person who —
>
> (*a*) is an officer of the armed forces or a senior military expert; or
>
> (*b*) is skilled in an occupation which the Minister by notification in the Gazette designates as an occupation required to meet the needs of the armed forces, not more than 50 years of age;
>
> ….

20 I pause to note that when an Act provides for a fine or an imprisonment term to be imposed, it is important for a court to determine the circumstances in which a custodial sentence would be appropriate ("the custodial threshold"). There are many factors that might determine when the custodial threshold is crossed. However, as noted in the recent decision of the High Court in *Public*

Prosecutor v Lim Choon Teck [2015] SGHC 265 ("*PP v Lim Choon Teck*"), strong policy reasons that seek to deter against certain undesirable conduct might provide an indication of when the custodial threshold for an offence is crossed. In *PP v Lim Choon Teck*, it was noted that the rise in the number of cyclists riding rashly on pavements gave rise to a need for general deterrence and consequently, the imposition of a custodial sentence. It was also noted in *PP v Lim Choon Teck* at [48] that the need for general deterrence has also resulted in a benchmark custodial sentence for "killer-litter" cases as well.

21 The court must approach the analysis of the custodial threshold in a principled manner by first examining the relevant statutory provision creating the offence and appreciating the policy underlying the said provision. The court should then examine whether that underlying policy intrinsically reveals or provides a clear indication of the custodial threshold for the offence.

The policy underlying s 32(1) of the Act

22 To my mind, the clearest statement of the policy underlying the Act is to be found in the decision of the High Court in *Lim Sin Han Andy v Public Prosecutor* [2001] 1 SLR(R) 643 where Yong Pung How CJ stated as follows (at [18]):

> … National Service is vital to the security of Singapore and it necessarily entails sacrifices by national servicemen and their families. In order to safeguard the security interests of the State, everyone who is required by law to do national service must obey and carry out the lawful orders given to him. If the courts were to sympathise with the personal difficulties of every national serviceman, the overall effectiveness and efficiency of civil defence or the Singapore Armed Forces would be severely compromised. The deterrence of the individual offender, and others who might be tempted to commit the offence, is therefore necessary to advance the public interest involved in cases such as the present one.

23 The above observations of Yong CJ have also been recently endorsed by the High Court in *Mohammed Ibrahim v PP* at [22]. I also highlight that in the process of unearthing the principles underlying s 32(1) of the Act, the court in *Seow Wei Sin v Public Prosecutor and another appeal* [2011] 1 SLR 1199 stated at [37] that *national security*, *universality and equity* were the three fundamental principles underpinning the NS policy in Singapore.

24 In the context of national security, NS has to be served in accordance with the prevailing defence policy, which includes operational effectiveness and fairness. The defence policy is set by MINDEF, and it is for MINDEF to decide when and how a male Singaporean citizen is to serve NS. It is therefore not open to an individual to choose unilaterally when he would discharge his NS obligations. Nevertheless, the Act already provides for some (highly) limited possibility for an individual to defer his NS liabilities *with the unequivocal consent of MINDEF*. He, however, would need to successfully obtain such deferment and hold a VEP if he should remain overseas before he serves NS. This limited exception is also subject to the principle of *equity* and *universality* and does not detract from the general policy that all male citizens of Singapore have to postpone their individual goals in order to fulfil their obligations to Singapore. This sacrifice is premised on the fair share argument noted at [1] above. I reproduce the relevant portions of the Ministerial Statement that also make this point:

> [D]eferment cannot be free for all. *The concept of National Service does involve making a sacrifice or postponing a person's individual gratification or pursuit of his own personal life goals to serve the nation when the nation needs his service.* So the concept of self-sacrifice and postponement of personal gratification is an inherent part of National Service and it is not possible to have a system where the person's personal gratification is completely fulfilled and yet, at the same time, he

> serves National Service. These two things are not completely compatible.
>
> But more importantly, *we must bear in mind our fundamental principle of equity, not just in terms of whether one serves National Service or not, but also in terms of when one serves National Service. A deferment policy can be flexible only to the extent where equity is maintained. Otherwise, as I have said, there will be a loss of morale and commitment if it is perceived that some can get deferred to pursue their personal goals while others have to serve.* As far as possible, we also want pre-enlistees of the same school cohort to enlist for National Service at around the same time. This helps in terms of bonding - the cohesion of the units and their fighting spirit - and also ensures equity in that they all bear similar interruptions to their studies or careers.
>
> [emphasis added]

25 The offence under s 32(1) of the Act, which sanctions against being outside Singapore without possessing a VEP, when viewed together with the extremely limited circumstances under which one might defer the commencement of NS, sanctions against individuals deferring their NS so as to further their education or life pursuits in a manner that amounts to gaining an advantage over their peers who would have had to postpone such pursuits. It might, on the one hand, seem as if an offender has secured only a technical advantage by being overseas without a VEP, as he would eventually have to serve NS after having pursued his individual goals. While such a technical advantage is in itself objectionable given that it detracts from universality and consequently, may dampen the morale and commitment of other Singaporean men serving NS, I must also point out that the advantage gained here is far more than a technical advantage for the following reasons:

(a) An individual may be lesser suited for a combat role as his age increases (as a result of him postponing his NS obligations); and

(b) The later commencement of NS reduces the time available (or may even make it impossible) for the individual to fully complete his post-operationally ready date ("post-ORD") reservist obligations.

26 Therefore, the advantage that one might gain from deferring his NS obligations is real and not merely technical. It is for this reason that s 32(1) operates together with s 33(*b*) of the Act to sanction against individuals obtaining an advantage over others.

27 In light of the above, it is not difficult to see why there should be a strong correlation between an offender's culpability and the number of years he evaded NS by reason of being overseas without a VEP; the longer he is in default the greater is his violation of the principle of equity and universality. This point has also been noted by the court in *Mohammed Ibrahim v PP* in the following manner (at [37]):

> The length of the period of default is an important factor, but not the only factor to be taken into account in determining the appropriate sentence to be imposed for an offence under the Act. We agreed with what was stated in *Seow Wei Sin* (at [33]) that the seriousness of an offence under the Act should not be determined purely on the basis of the length of period of default, but should also take into account all the circumstances surrounding the commission of the offence. That said, *the length of the period of default will usually be the key indicator of the culpability of the offender and accordingly, how severe a sentence ought to be imposed on the offender. This makes eminent sense because the length of the period of default also has a direct correlation to the likelihood of the offender being able to serve his NS duties in full. This is because the longer the period of default, the less likely the offender will be able to discharge his NS obligations and contribute to the security and defence of Singapore*, which is the public interest underpinning the Act. …
>
> [emphasis added]

The custodial threshold that should be applied in relation to s 32(1) of the Act

28 It is noted that s 33 of the Act only provides for a fine up to $10,000 or a custodial sentence of up to three years' imprisonment. The plain words of ss 32(1) and 33 do not shed any light on the circumstances that must exist for the custodial threshold to be crossed. However, as has been observed at [27] above, there is a strong correlation between the number of years an individual spends overseas without a VEP and his culpability. The custodial threshold for an offence under s 32(1) read with s 33 of the Act would therefore be most aptly expressed using the number of years the offender was overseas without a VEP.

29 In this regard, the Prosecution submits that the Ministerial Statement provides guidance on the custodial threshold for an offence under s 32(1) of the Act. I pause to give some context: the Ministerial Statement was made in the Parliamentary debates which led to the doubling of the maximum fine under s 33 of the Act from $5,000 to $10,000 and in the midst of public concern on lenient sentences being imposed on offenders who defaulted on their NS obligations by remaining overseas. I reproduce the portion of the Ministerial Statement relied on by the Prosecution:

> MINDEF does not consider it necessary at this time to seek a minimum mandatory jail sentence for Enlistment Act offences, as the circumstances of the cases vary widely. However, from now on, MINDEF will ask the prosecutor to press for a jail sentence in serious cases of NS defaulters, and explain why we consider a jail sentence appropriate in a particular case. Serious cases include those who default on their full-time National Service responsibilities for two years or longer from the time they were required to register or enlist, or from the time their exit permits expired for those granted deferment, whichever is later. *We believe that it is in the public interest that such NS defaulters face a jail sentence, unless there are mitigating circumstances.*

> I would like to provide some illustrations of what MINDEF considers to be sentences appropriate to the nature of the offence or commensurate with its gravity:
>
> (a) *Where the default period exceeds two years but the defaulter is young enough to serve his full-time and operationally ready NS duties in full, MINDEF will press for a short jail sentence.*
>
> (b) Where the defaulter has reached an age when he cannot serve his full-time NS in a combat vocation or fulfil his operationally ready NS obligations in full, a longer jail sentence to reflect the period of NS he has evaded may be appropriate.
>
> (c) Where the defaulter has reached an age when he cannot be called up for NS at all, a jail sentence up to the maximum of three years may be appropriate.
>
> In all instances, we expect that the Court will take into account whatever aggravating or mitigating circumstances there may be in each case to determine the appropriate sentence.
>
> [emphasis added].

30 The Ministerial Statement was intended to deal with a case like the present, where the offender defaults on his NS obligations by remaining overseas *ie*, a case involving an overseas defaulter. The effect of the Ministerial Statement on the sentencing discretion of the court under s 33 of the Act was recently discussed by the court in *Mohammed Ibrahim v PP*. I must point out however that that case was dealing with an offence under s 3(1) of the Act, where the offender defaulted on his liabilities while within jurisdiction *ie*, a case involving a local defaulter. This distinction does not render inapplicable any of the observations of the court in *Mohammed Ibrahim v PP* at [29] that "no general distinction should be drawn in the sentencing approach towards overseas defaulters and local defaulters".

31 I reproduce the relevant observations made by the court in *Mohammed Ibrahim v PP* in relation to the Ministerial Statement:

> [19] … The courts are ultimately committed to giving effect to the intention of Parliament as expressed in the Act. Where ministerial statements relating to sentencing policy have been made in Parliament but not incorporated into statute, the courts should be careful not to automatically substitute such statements for the actual wording of the sentencing provision in question. To do so would amount to permitting the Minister to effectively legislate under the guise of interpretation.
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> …
>
> [21] We would therefore disagree with the parties' submissions that the Ministerial Statement should *ipso facto* be adopted by the courts as a starting point in the sentencing process. The Ministerial Statement was clearly, by its very terms, an expression of the prevailing prosecutorial policy, and should not be taken to be anything more than that. That having been said, it was undeniable that *the Ministerial Statement*, made in the context of a proposal (not yet presented as a Bill) to enhance the punishments to be imposed on NS defaulters, *remained significant in so far as it revealed the public policy considerations of Parliament in relation to the punishment provisions of the Act. It should in turn inform the courts as to the sentencing policy which should be adopted by the courts.*
>
> …
>
> [38] At the end of the day, although there is a need for consistency in sentencing which in turn will enhance public confidence in the administration of justice, each case must still be assessed on its own facts. *We have noted at [35] above that, based on the sentencing precedents, cases involving short periods of default of two years or less will generally not attract a custodial sentence*. This is a useful starting point but it bears reiterating that the courts should not slavishly adhere to it but should consider the circumstances of the case in totality. If there are aggravating circumstances, even a period of default of two years or less may warrant the imposition of a custodial sentence. Conversely, in exceptional cases such as in *Seow Wei Sin*, the court may impose a fine even for a substantial period of default if the culpability of the offender is low.
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> [emphasis added]

32 In essence, the court in *Mohammed Ibrahim v PP* was of the view that though the Ministerial Statement was an expression of prevailing prosecutorial policy, it remained significant insofar as it revealed the public policy

considerations in relation to the punishment provisions under the Act. The court noted – as a useful starting point based on the sentencing precedents –that cases involving a short period of default of two years or less would generally not attract a custodial sentence but each case must ultimately be assessed on its own set of facts and circumstances. I agree with the court in *Mohammed Ibrahim v PP* that the Ministerial Statement sets out the policy underlying the punishment of an offence under s 32 (read with s 33) of the Act. However, the second solicitor-general, Mr Kwek Mean Luck ("Mr Kwek"), submitting on behalf of the Prosecution in the present appeal, has helpfully pointed out that a further distinction should be made between overseas defaulters who have a substantial connection to Singapore and those who do not have such a connection. In this regard, the Prosecution, in essence, takes the position that the custodial threshold of two years without VEP should generally only apply to individuals who have had a substantial connection to Singapore prior to departing overseas.

33 The Prosecution refers to a list of unreported decisions where the overseas defaulter had an insubstantial connection to Singapore.[3] As the detailed factual accounts in relation to these cases are not before the Court, I summarise some of these decisions in Table 1 below based on the limited information available.

Table 1: Defaulters with an insubstantial connection to Singapore

Decision	**Age when offender left**	**Age when offender**	**Period without a VEP**	**Sentence**

[3] Appellant's submissions dated 12 October 2015, para 54.

	Singapore (years)	**returned to serve NS (years)**		
PP v Amit Rahul Shah (DAC 267171/2008, unreported)	1	22	4 years, 8 months and 3 days	3 months' imprison ment
Lee Sun Loong Merrill v PP (MA 163/2011, unreported)	3	-	4 years, 7 months and 29 days	A fine of $4,000
PP v Li Ting Kuan Evan (DAC 35902/2011, unreported)	6	-	4 years, 4 months and 3 days	A fine of $4,000
PP v Anas Wabil E1 Maghrabi (DAC 18678/2012, unreported)	11 (returned to Sudan with father after mother's demise)	-	4 years, 8 months and 1 day	A fine of $3,000

34 Without commenting on the adequacy of the individual sentences imposed in the cases listed in Table 1 above, I note in general that the proposition advanced by Mr Kwek is principled and sensible. The sentencing of overseas defaulters is generally premised on the fair share argument. This presumes that they have enjoyed (or will enjoy) the benefits of Singapore citizenship and, therefore, it is only fair to sanction against their refusal to fulfil their NS obligations at a time similar to their local peers to make good any inequity. When an offender leaves Singapore at a very young age, his connection to Singapore might be merely incidental and one relating only to place of birth. The fair share argument therefore does not apply with the same force that it would in relation to an offender who leaves Singapore after having reaped the benefits of the local education system and/or retains a substantial connection to Singapore by reason of, *inter alia*, his family being based here. The age at which the overseas defaulter leaves Singapore is one significant indicator of whether he has a substantial connection to Singapore. Generally when a person leaves Singapore at a later point in his life after having commenced and/or completed his secondary education here, he would be regarded as having a greater connection to Singapore. The location of an individual's family in Singapore also shows that he is likely to return to Singapore and enjoy the benefits of Singapore citizenship. This is another indicator of the extent of the defaulter's connection to Singapore.

35 I note that most of the overseas defaulters who had an insubstantial connection to Singapore were only awarded fines. While the custodial threshold for overseas defaulters with an insubstantial connection to Singapore merits consideration, a discussion in this regard should be reserved for an occasion where the court has before it a case of that nature.

36 In light of the above, I hold as a starting point that the custodial threshold will generally be crossed when an overseas defaulter who has a substantial connection to Singapore remains overseas without a VEP for more than two years. I must once again caution that the custodial threshold of remaining outside Singapore without a VEP for at least two years and the sentencing benchmark that is set out in this judgment relate only to offenders who have a substantial connection to Singapore. On the flipside, it is not open to the respondent to rely on the cases cited in Table 1 (which relate to offenders with an insubstantial connection to Singapore) to suggest that he should be let off with a fine. The respondent left Singapore after having completed his primary and some part of his secondary education here and retains a substantial connection to Singapore: his family resides here and the respondent intends to reside in Singapore. He therefore has and will reap the benefits of Singapore citizenship and has, by delaying his NS obligations, violated the principles of equity and universality and undermined the fair share argument.

37 I am also not inclined to and see no necessity to seek guidance from the AWOL cases that were cited to me by the Prosecution to set a benchmark for sentences imposed for offences under s 32(1) of the Act. I agree with counsel for the respondent that AWOL offences are within the remit of military law and the SAF Act. The sentencing considerations there relate to the standard of conduct expected of individuals who are already serving NS, while the Act deals with the obligations of an individual to enlist by reason of being a Singaporean male. The post-enlistment sentencing considerations (which dictate the length of sentences for AWOL offences) may not fully apply to individuals who have not yet commenced NS.

38 I am of the view that the policy underlying s 32(1) of the Act as exemplified by the Ministerial Statement provides sufficient guidance to enable the Court to outline the benchmark sentences that should apply across the spectrum for overseas defaulters with a substantial connection to Singapore.

Benchmark sentences for overseas defaulter with a substantial connection to Singapore

39 Before setting the benchmark sentences for overseas defaulters with a substantial connection to Singapore, I propose to first review the existing precedents. Most of the existing precedents are unreported. I summarise some of these decisions in Table 2 below with the limited information available.[4]

Table 2: Defaulters with a substantial connection to Singapore

Decision	**Age when offender left Singapore (years)**	**Age when offender returned to serve NS (years)**	**Period without a VEP**	**Sentence**
PP v Muhammad Syaddieq bin Johari (DAC	20	24	4 years, 8 months and 13 days	2 weeks' imprison ment

[4] Appellant's submissions dated 12 October 2015, para 55.

44269/2013, unreported)				
PP v Kenny Law Jun Lin (DAC 34954/2013, unreported)	18	23	4 years, 6 months and 4 days	4 months' imprisonment
PP v Madhurandhaga Thevar s/o Arul [2014] SGDC 290	15	27	7 years, 2 months and 4 days	1 weeks' imprisonment
PP v Lee Soon Ann (DAC 931229/2014, unreported)	27 (after release from prison)	31	4 years, 6 months and 5 days	2 months' imprisonment
PP v Goh Khim Siong (MA 212/2010, unreported)	The offender was a local defaulter who was initially granted deferment	28	4 years 8 months and 22 days	4 months' imprisonment

PP v Shafinas Bin Muhammad Djuanda (DAC 915492/2014, unreported)	20	22	2 years 2 months 5 days	A fine of $8,000

40 In contradistinction to Table 1 (at [33] above), it will be noted that overseas defaulters with a substantial connection to Singapore (as evinced by, *inter alia*, their later departure from Singapore when they were much older) have had custodial sentences imposed on them. I also note, in any case, that *PP v Shafinas Bin Muhammad Djuanda* (DAC 915492/2014, unreported), the only case in Table 2 where a fine was imposed, is a case where the offender's period without a VEP is close to the two year custodial threshold. Therefore, it cannot be said that the sentence imposed in that case is *manifestly inadequate* when compared to the benchmark sentences that will be set out in this judgment.

41 I now analyse the other decisions in Table 2. Only one of the decisions in Table 2 has been issued by the High Court *viz*, *PP v Goh Khim Siong* (MA 212/2010, unreported) ("*PP v Goh Khim Siong*"). In that case, the offender was a local defaulter who applied for deferment as he was the sole breadwinner in his family and needed to take care of his mother. MINDEF gave him a grace period to allow him to tide over the difficult times. After the grace period expired, the offender was away for four years, eight months and 22 days without a VEP. By the time he was arrested, the accused was 28 years old. He served his NS after his arrest. At first instance, a fine of $3,000 was imposed on the offender. On appeal, the fine was set aside by VK Rajah JA (as he then was)

and a sentence of four months' imprisonment was imposed. As will be seen below, after taking into account the aggravating factor in that case: the accused ran away after having been granted deferments by MINDEF and commenced NS at a later age, it will be found that the sentence imposed in *PP v Goh Khim Siong* broadly squares with the sentencing benchmarks that I have set out. The sentences imposed in *PP v Kenny Law Jun Lin* (DAC 349541/2013, unreported) and *PP v Lee Soon Ann* (DAC 931229/2014, unreported) are also broadly in line with the sentencing benchmarks. However, the sentences imposed in *PP v Muhammad Syaddieq bin Johari* (DAC 44269/2013, unreported); and *PP v Madhurandhaga Thevar s/o Arul* [2014] SGDC 290 appear to be manifestly out of line with both *PP v Goh Khim Siong* and the sentencing benchmarks set out below.

Some observations on developing benchmark sentences

42 Development of benchmark sentences must have its roots in rigorous scenario analysis *ie*, a conditional analysis of a hypothetical offender under a wide selection of probable scenarios. A court needs to look at the entire available sentencing spectrum and determine whether and to what extent the sentences are to be spread out over this spectrum to account for varying degrees of culpability amongst offenders, ranging from the least culpable to the most culpable of them. Such analysis requires one to first identify the primary factor that determines the length of a sentence in relation to the particular offence. The factor will then be used to plot the trend line/curve across the appropriate part of the sentencing spectrum. This is not to say that sentences are always to be determined in a two-dimensional manner. While I recognise that sentencing is multi-dimensional, these dimensions can be accommodated subsequently by

horizontal and vertical adjustments of a trend line/curve born out of a two-dimensional analysis.

43 In order for benchmark sentences to be of any practical utility, it is important to define the characteristics of a hypothetical/archetypal offender in relation to the offence. This allows the application of the benchmark as a general guide for the archetypal case and in a nuanced manner should unique circumstances be present in the case before the sentencing court.

44 The sentencing benchmark during its development should, where possible, be tested against existing precedent cases. If the existing cases do not fall within the benchmark, it falls upon the court setting the benchmark to re-examine and re-calibrate the benchmark to be set, if it is appropriate to do so, or explain the circumstances which require the benchmark to depart from the precedent(s), if they remain irreconcilable.

45 It must also be borne in mind that in a two-dimensional analysis, the degree of culpability of an offender at any point of the sentencing curve is represented by that point on the vertical y-axis in relation to the extent of the primary or most significant variable factor (*ie*, the period without a VEP) present in offender's case as represented by that point on the horizontal x-axis. Therefore, it must also be decided if the sentence is to increase linearly across the spectrum for that variable factor or whether (as in the present case) the seriousness of the offence increases at an increasing rate for equal increments of that variable factor such that the gradient of the sentencing curve should be steeper over a certain part of the spectrum. If that is indeed the case, the gradient of the two-dimensional plot will change along the curve as one moves further towards the right along the horizontal x-axis of the sentencing graph.

46 Lastly, I am of the view that it is pointless to debate whether sentencing is an art or a science. To achieve logical consistency and fairness in sentencing, the mental iterative and analytical processes to derive an appropriate sentence for a set of facts and circumstances in relation to the commission of a particular offence cannot purely be an art or a science. A judicious exercise of discretion by combining both approaches is more likely to produce the most appropriate and fair sentence. Science should be used as a guide where possible to aid in the art of sentencing. In my view, it is short-sighted to avoid completely the use of any analytical tools and scientific aids if they are capable of playing a useful guiding role to assist in the process of reasoning that must take place when deriving an appropriate and fair sentence for a particular case having regard to all the relevant facts and circumstances. Parliament sets out the sentencing range for a particular offence. The court has to exercise its sentencing *discretion* within that sentencing spectrum. Accordingly, a court should not shy away from envisaging various possible scenarios and analysing what should be the appropriate sentence for each of the various scenarios given the sentencing spectrum and *then* deciding how it should exercise its discretion to determine the sentence for a particular case that is broadly consonant within the whole possible spectrum. There must be a good deal of "reason" and "logic" in reasoning. Unless chance favours the judge, it is generally difficult to achieve parity, consistency and fairness when exercising the sentencing discretion without being assisted or guided by an analytical framework that is grounded in logic, especially when multiple factors come into play to affect the determination of the appropriate sentence.

The major factors that influence the benchmark sentence in this case

The number of years the offender evaded NS without a VEP

47 The primary factor that influences the length of the sentence in relation to an offence under s 32(1) of the Act would be the length of time the offender evades NS by remaining without a VEP. This is a key indicator of culpability, as the longer the offender remains without a VEP, the greater is his violation of the principle of universality. The degree of culpability of an offender over the sentencing spectrum is not linear. The earlier the offender returns to serve NS, the greater his utility will be to NS, as it is more likely that he would be able to serve in a combat role. There is also a greater likelihood that he would be able to fulfil his post-ORD reservist obligations completely and in a combat role.

48 However, it is also recognised that one part of the fair share argument that relates to the prospective gains from citizenship weakens the longer an offender stays overseas. Therefore, an offender who returns much later in the day, arguably, will prospectively enjoy less benefits of Singapore citizenship than one who returns earlier, serves his NS and thereafter remains in Singapore. While this factor decreases the culpability of the offender at an increasing rate the longer he stays away from Singapore, the decrease in culpability would generally be of a smaller magnitude when compared to the increase in culpability from evading NS by being overseas longer without a VEP; the latter factor is assigned greater weight in determining an appropriate sentence. The net result is that one might graphically expect the gradient of the sentencing curve to increase gradually over a large part of the sentencing spectrum and eventually flatten out as one moves towards the right along the x-axis.

49 I note that the Court has not been apprised of MINDEF's policy in relation to individuals who return two years before they turn 40 years old. It is unclear if these individuals would be required to serve NS. The benchmark set here assumes that anyone who returns before 40 years old would have to serve NS, but in case this is not the policy, this judgment will also set out alternative sentencing considerations that would apply if anyone above 38 years old (being 40 years of age minus two years of full-time NS) is not required to serve NS anymore.

Whether the offender voluntarily surrendered or was arrested

50 An aggravating factor is a factor that is not present in the archetypal case in relation to a particular offence. Therefore, a factor that invariably presents itself in every case of a particular offence should not be considered to be an aggravating factor but should be treated as a neutral factor. In the present case, the fact that an offender has been arrested or that he had an intention to evade NS by ignoring messages sent to him by MINDEF cannot be taken to be an aggravating factor. This is a neutral factor that should be taken to be characteristic of the archetypal/base case in the sentencing benchmark. This point was made in *Mohammed Ibrahim v PP* (at [40]) in the following manner:

> However, we did not think that either an intentional decision not to comply with a notice to register for NS or a failure to voluntarily surrender to the authorities could properly be regarded as aggravating factors. *An intention to evade NS would invariably be present in every case of NS default, even in the case of an overseas defaulter. In our view, these were merely neutral factors in the sentencing approach to be adopted under the Act.* … [I]f the accused person admits that he knew about the notice and did not comply with it, this merely means that he has admitted to committing the offence in question. As for a failure to voluntarily surrender to the authorities, it would be an inherently speculative exercise to take this into account as an aggravating factor. …

[emphasis added]

51 If the fact that the offender is arrested is taken to be a neutral factor, I am of the view that voluntary surrender (a positive deviation in favour of the offender from the base case) must be taken to be a mitigating factor. This point also finds support in the following passage from *Mohammed Ibrahim v PP* (at [41]):

> While the fact that an accused person has voluntarily surrendered to the authorities and/or did not intentionally commit the offences under the Act might well operate as mitigating factors reducing the accused's culpability, the converse is not necessarily true. Just as the lack of aggravating factors cannot be construed as a mitigating factor (see *PP v Chow Yee Sze* [2011] 1 SLR 481 at [14]), the lack of mitigating factors cannot be construed as an aggravating factor.

52 However, I am of the view that a nuanced approach has to be taken in relation to this mitigating factor. The longer the offender has evaded NS without a VEP, the lesser is he incentivised to return to Singapore and voluntarily surrender. Therefore, it follows logically that a voluntary surrender later in the day should be accorded more mitigatory weight as opposed to a surrender very early in the day.

Did the offender plead guilty or claim trial?

53 As noted in *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [36], a timeously-effected plea of guilt may merit a sentencing discount. However, as noted in the same case, the mitigatory value of a guilty plea may be substantially attenuated when the public interest underlying the offence nevertheless demands a deterrent sentence (at [37]). In the present case, I am of the view that an offender pleading guilty would result in a sentencing discount

of about one-quarter. I also note that empirically, most offenders under the Act have pleaded guilty.

Performance during full-time NS

54 An offender under s 32(1) of the Act, evades his NS obligations and tries to depart from the experience of his peers by serving NS at a later point of time. Unremarkable performance during full-time NS would generally be treated as a neutral factor, as the offender should only be once punished for evading his NS obligations.

55 However, if the offender performs exceptionally well during his full-time NS, *ie*, enters command school and/or receives good testimonials from his superiors, this should be treated as a strong mitigating factor. This is because his exceptional performance counterweighs strongly against his extraction of an unfair advantage. Logically, the younger the offender is on his return after having evaded his obligations, the greater would be the mitigatory value of his exceptional performance, as it is (at least physically) likely that he would be able to contribute to NS with the same tenacity during his post-ORD reservist obligations. The older the offender is when he returns, the lesser the mitigatory value of his exceptional performance in NS, as it unlikely that he would be able to sustain that performance (physically) during his reservist obligations.

The scenarios and the hypothetical offender

56 I would now proceed to analyse three likely scenarios that a court might be confronted with in relation to an overseas defaulter and set out the respective sentencing curves for each of these scenarios. I would then set out the

sentencing discount that might apply to offenders across these three scenarios if they should perform exceptionally well during NS.

Scenario 1: Base case

57 The hypothetical offender for the base case has to be an individual who exemplifies the archetypal offender for a particular offence. Having considered the precedents, the nature of the offence and the need for the benchmark to be of practical utility, I am of the view that the hypothetical offender in the base case should be assigned the following characteristics:

(a) begins evading his obligations when he is due to register for NS at 16 years and six months old, *ie*, the number of years he spends without a VEP should be computed from the age he returns to Singapore to serve NS minus 16 years and six months;

(b) is arrested;

(c) pleads guilty; and

(d) has unexceptional performance in NS.

Scenario 2: A more culpable offender

58 Relative to the base case, a hypothetical offender who has the following characteristics would be more culpable:

(a) begins evading his obligations when he is due to register for NS at 16 years and six months old, *ie*, the number of years he spends without a VEP should be computed from the age he returns to Singapore to serve NS minus 16 years and six months;

(b) is arrested;

(c) claims trial; and

(d) has unexceptional performance in NS.

Scenario 3: A less culpable offender

59 Relative to the base case, an offender who has the following characteristics would be less culpable:

(a) begins evading his obligations when he is due to register for NS at 16 years and six months old, *ie*, the number of years he spends without a VEP should be computed from the age he returns to Singapore to serve NS minus 16 years and six months;

(b) voluntarily surrenders;

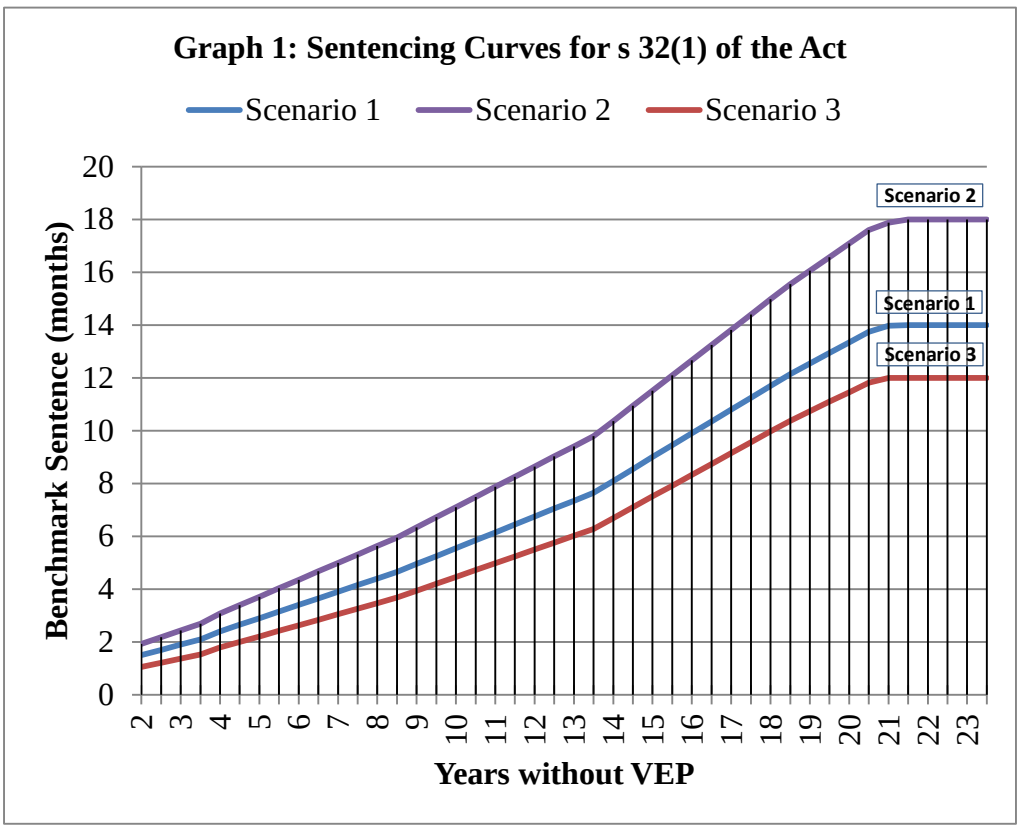
(c) pleads guilty; and

(d) has unexceptional performance in NS.

The benchmark sentences

60 I must caution that the sentencing curves set out here for each scenario are guides that only take into account the characteristics listed under each scenario. It also assumes that the offender begins evading NS when his statutory obligation to register for NS commences, *ie*, when he is 16 years and six months old. Therefore, if a person has obtained a deferment prior to evading his obligations and begins NS at a later age thereafter, the benchmark sentence should be adjusted upwards to reflect this.

61 In the same vein, the court should – in the exercise of its sentencing discretion – calibrate the benchmark sentence to take into account other aggravating and mitigating factors. With these caveats, I set out a guide on the benchmark sentences that should apply for an offence under s 32(1) of the Act in Graph 1 below (see Annex A for plot values).



62 The primary factor that determines the change of gradient across the curve for Scenario 1 of Graph 1 above is the number of years an offender spends overseas without a VEP. The factors that influence the shape of the curve in this regard have already been discussed at length at [47] – [49] above. Additionally, I point out that Scenarios 2 and 3, which are deviations respectively from Scenario 1, are derived from Scenario 1.

63 In order to derive the sentencing curve for Scenario 2, I applied a linear percentage increment (or a fixed multiplicant) to the input values for Scenario 1 to reflect the fact that the offender in Scenario 2 claimed trial.

64 In order to derive the sentencing curve Scenario 3, I applied a non-linear discount to the sentence imposed in Scenario 1 to reflect the fact that the offender voluntarily surrendered. The discount spans from about half a month at the start of the spectrum on the x-axis, *viz*, two years without VEP and increases to about two months towards the end of the spectrum on the x-axis *viz*, 21 years without VEP. The reasons for which the discount applied increases across the spectrum have been noted at [50] – [52] above.

65 In addition to the above, when analysing the benchmark sentence to be imposed for an offence under each scenario, a court would have to adopt the following approach. It would first have to inquire on the age when the offender commenced being overseas without a VEP ("offence commencement age"). The following steps will then flow from the aforementioned inquiry:

(a) If the offence commencement age is 16 years and six months, the court may look directly to the relevant sentencing curve in Graph 1 that would most closely apply to the offender to seek a guide on an appropriate sentence for an offender; and

(b) If the offence commencement age is after 16 years and six months, the court may still look to the relevant sentencing curve in Graph 1 that would most closely apply to the offender to seek a guide on the baseline for sentencing the offender. The court would then have to take his age into account to increase the baseline sentence, as an offence commencement age much later than 16 years and six months

> would for the same number of "years without VEP" (unless shown otherwise) result in the likelihood of lower physical fitness of the offender over the course of the entire NS cycle (including his post-ORD reservist obligations).

66 The court would then have to consider if there are any other aggravating or mitigating factors in order to calibrate an appropriate sentence.

67 I demonstrate the application of the approach set out at [65] with *PP v Goh Khim Siong*. In that case, the offender had unexceptional NS performance and the period he defaulted his NS obligations was about five years. The offender was arrested and pleaded guilty to the offence. He would therefore fall within Scenario 1. Analysing the relevant sentence in Scenario 1 in Graph 1, one would find that the benchmark stipulated therein for a five-year period without VEP would be about three months' imprisonment. However, in that case, the offence commencement age was about 23 years. The offender received a long indulgence from MINDEF to defer the commencement of his NS obligations. These were aggravating factors that had to be taken into account to increase the sentence. The sentence imposed there of four months' imprisonment, in my view, adequately takes into account these aggravating factors and resonates well with the benchmark sentence that I have set out in Graph 1.

68 As noted above, MINDEF's policy in relation to offenders who return after 38 years old is not known; consequently, it is unclear if they would be required to or be able to completely serve at least their two-year full-time NS obligations. The sentencing benchmark assumes that they would. If this assumption is incorrect, then the sentence for offenders above 38 years old

(including offenders who return after they are 40 years old to reside in Singapore) who are arrested and claim trial subsequently would have to be calibrated upwards closer to the maximum sentence of three years' imprisonment to reflect the fact that they have evaded their NS obligations (both two years' full time NS and post-ORD reservist obligations) completely. This is also consistent with the guidelines set out in the relevant portion of the Ministerial Statement reproduced at [29] above.

69 As noted above, the discount to be applied to cases where an offender has exceptional performance during full-time NS has not been incorporated in Graph 1. The discount given for exceptional performance during full-time NS decreases over time for reasons noted at [54] – [55] above. The younger the offender is on his return after having evaded his obligations, the greater would be the mitigatory value of his exceptional performance, as it is likely that he would (at least physically) be able to contribute to NS with the same tenacity during his reservist obligations. The older the offender is when he returns, the lesser the mitigatory value of his exceptional performance in NS, as it unlikely that he would be able to sustain that performance (physically) during his reservist obligations. With this in mind, I set out the discount to be applied to the benchmark sentence under all scenarios in Graph 1 in Table 3 below.

Table 3: Discount to be applied to sentence for exceptional performance during full-time NS

Age when offender returns	**Discount to benchmark sentence for exceptional performance in NS**

Below 20 years of age	Two months
20 – 25 years old	One-and-a-half months
25 – 30 years old	One month
30 – 35 years old	Three-quarters of a month
35 – 40 years old	Half a month

70 I observe from applying the discounts in Table 3 to Scenario 3 in Graph 1, that an offender who returns to Singapore from overseas before the age of 20, voluntarily surrenders and performs exceptionally well during full-time NS might (in the absence of other aggravating factors) have a fine imposed on him instead of a custodial sentence for an offence under s 32(1) of the Act. In a sense, the custodial "immunity" under the benchmark for offenders under the Act may be extended slightly beyond the two-year custodial threshold if they perform exceptionally well during NS.

71 I complete the discussion by noting that there are other cases relating to overseas defaulters that were decided before the Ministerial Statement and the consequent amendment to s 33 of the Act to increase the maximum fine in 2006 ("pre-2006 decisions"). The pre-2006 decisions were decided before the policy in relation to s 32(1) of the Act was clearly articulated. It is for this reason that they possess limited (if any) precedential value.

Application of the benchmark sentence to the present case

72 The respondent was away without a VEP for a period of six years and 27 days. It is noted that he voluntarily surrendered when he decided to return after his university education. The respondent therefore falls within Scenario 3 of Graph 1. Observing the benchmark sentence based on the period he was overseas without a VEP, *viz*, six years and 27 days, it would be noted that, all else being equal, a benchmark sentence of slightly below three months' imprisonment would apply to him. Indeed, this is the sentence sought by the Prosecution.

73 The respondent performed exceptionally during full-time NS, by excelling while he was in BMT and SCS and sustaining the same stellar performance throughout the rest of his stint with the CIS. His commanders in NS wrote testimonials in support of his exceptional performance. I am thus inclined to apply the relevant discount noted at Table 3 above, *viz*, a one-and-a-half month discount (the respondent returned when he was 22.5 years old), to the benchmark sentence. When so applied, the appropriate sentence for the respondent would be a period slightly below one-and-a-half months' imprisonment. However, I am satisfied that the respondent should be sentenced to one-and-a-half months' imprisonment without any further minor downward calibration. In reaching this sentence, I have regard to the respondent's spurious argument on not receiving emails from the CMPB because of a change of his computer.

Observations on the decision below

74 For completeness, I point out that the DJ erred in not according sufficient weight to general deterrence and the fair share argument in meting a fine on the

respondent when his period of default was not insignificant. I must also point out that the respondent's ADD was a red herring. While it might have been the case that the appellant had left Singapore because he felt that the local education system did not cater to his condition, this had nothing to do with his culpability. The appellant's culpability flowed not from the fact that he *left* for Australia because of his ADD, but from him *remaining* there even after he knew that he was required to register for a VEP or return for NS.

75 He could have always applied for deferment till the completion of his foundation studies and returned to serve NS before proceeding with his university education. He chose not to do so and must face the consequences.

Conclusion

76 The respondent in the present case gained an unfair advantage over his peers by choosing to remain overseas to complete his university education instead of returning to Singapore to discharge his NS obligations. He had therefore violated the principle of universality that undergirds NS and our national defence. The respondent had, however, voluntarily surrendered and made a significant contribution to NS through his exceptional performance in NS. The Court has regard to these factors in sentencing the respondent.

77 Having set out the benchmark sentence for an offence under s 32(1) of the Act and after balancing all the factors in this case, I set aside the fine of $4,500 imposed on the respondent by the DJ and impose in its place a term of one-and-a-half months' imprisonment. The prosecution's appeal against the sentence is thus allowed.

Chan Seng Onn
Judge

Kwek Mean Luck, Kow Keng Siong and Senthilkumaran Sabapathy
(Attorney-General's Chambers) for the appellant;
SH Almenaor (R Ramason & Almenoar) for the respondent.

Annex A: Plot values for Graph 1

Years without VEP	Sentence (months)		
	Scenario 1	**Scenario 2**	**Scenario 3**
2	1.50	1.92	1.05
2.5	1.70	2.18	1.21
3	1.90	2.43	1.37
3.5	2.10	2.69	1.53
4	2.40	3.07	1.79
4.5	2.65	3.39	2.00
5	2.90	3.71	2.21
5.5	3.15	4.03	2.42
6	3.40	4.35	2.63
6.5	3.65	4.67	2.84
7	3.90	4.99	3.05
7.5	4.15	5.31	3.26
8	4.40	5.63	3.47
8.5	4.65	5.95	3.68
9	4.95	6.34	3.94
9.5	5.25	6.72	4.20
10	5.55	7.10	4.46
10.5	5.85	7.49	4.72

11	6.15	7.87	4.98
11.5	6.45	8.26	5.24
12	6.75	8.64	5.50
12.5	7.05	9.02	5.76
13	7.35	9.41	6.02
13.5	7.65	9.79	6.28
14	8.10	10.37	6.69
14.5	8.55	10.94	7.10
15	9.00	11.52	7.51
15.5	9.45	12.10	7.92
16	9.90	12.67	8.33
16.5	10.35	13.25	8.74
17	10.80	13.82	9.15
17.5	11.25	14.40	9.56
18	11.70	14.98	9.97
18.5	12.15	15.55	10.38
19	12.55	16.06	10.74
19.5	12.95	16.58	11.10
20	13.35	17.09	11.46
20.5	13.75	17.60	11.82
21	13.97	17.88	12.00
21.5	14.00	18.00	12.00

22	14.00	18.00	12.00
22.5	14.00	18.00	12.00
23	14.00	18.00	12.00
23.5	14.00	18.00	12.00