Mohammed Ibrahim s/o Hamzah *v* Public Prosecutor
[2014] SGHC 269

Case Number	: Magistrate's Appeal No 108 of 2014
Decision Date	: 19 December 2014
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; See Kee Oon JC
Counsel Name(s)	: The appellant in person; Tai Wei Shyong and Mark Jayaratnam (Attorney-General's Chambers) for the respondent; Chng Zi Zhao Joel (WongPartnership LLP) as amicus curiae.
Parties	: Mohammed Ibrahim s/o Hamzah — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing

19 December 2014

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by the appellant, Mohammed Ibrahim s/o Hamzah ("the Appellant"), against the sentence imposed on him for failing to report for registration for National Service ("NS"), an offence under s 3(1) of the Enlistment Act (Cap 93, 2001 Rev Ed) ("the Act"). The period of default was one year, three months and two days. In the district court below, the Appellant was convicted and sentenced to two months' imprisonment. He appealed against the sentence on the ground that it was manifestly excessive, and requested for a fine to be imposed instead.

2 As there was a dearth of High Court sentencing precedents specifically relating to offences under s 3(1) of the Act, and as NS is undoubtedly an issue of national importance, Mr Chng Zi Zhao Joel ("Mr Chng") was specifically appointed as *amicus curiae* to assist the court on whether a custodial sentence was warranted in this case.

3 After hearing the submissions of the parties and Mr Chng, we allowed the appeal. We set aside the sentence of two months' imprisonment and replaced it with a fine of $3,000. Upon the Appellant's application, we allowed the fine to be paid in six monthly instalments and ordered that in default of payment of each $1,000 or part thereof, the Appellant is to be sentenced to one week's imprisonment. We now give the detailed grounds for our decision.

Background Facts

4 The Appellant is a Singapore citizen and was born on 3 November 1994. He was 20 years of age at the time of the hearing. He admitted without qualification to the statement of facts, the salient parts of which are summarised as follows.

5 On 20 December 2011, a notice was published in the Government Gazette pursuant to s 3(1) and s 30(2)(*b*) of the Act, requiring every male Singapore citizen and Singapore permanent resident born between 27 August 1994 and 5 December 1994 to register for NS between 7 February 2012 and 28 February 2012. This notice applied to the Appellant. A Registration Notice dated 13 January 2012

was sent by post to the Appellant's registered local address, informing him to register for NS within the stipulated period (*ie*, between 7 February 2012 and 28 February 2012) via the online NS Portal. The Appellant did not register for NS within the stipulated period.

6 Despite further reminders, the Appellant did not report for registration for NS and medical examination. A Further Reporting Order ("FRO") dated 5 March 2012 was sent by post to the Appellant's registered local address, informing him to report at the Central Manpower Base, Ministry of Defence ("CMPB") on 18 April 2012 for registration for NS and medical examination. The Appellant did not do so. Another FRO dated 9 May 2012 was sent by post to the Appellant's parents' registered local address, stating that the Appellant was to report at the CMPB on 23 May 2012 for registration for NS and medical examination. Again, the Appellant defaulted.

7 On 28 June 2012, the Appellant's mother contacted the CMPB and informed them that the Appellant had earlier been sentenced to reside at the Singapore Boy's Hostel ("the Hostel"), but had absconded from the Hostel sometime in March 2011.

8 On 16 July 2012, a Police Gazette cum Blacklist was raised against the Appellant for failing to register for NS and undergo medical examination. The Appellant was arrested by the police on 4 June 2013. Thereafter, the Appellant was sentenced to serve in the Singapore Boy's Home until he turned 19 years of age (*ie*, until 3 November 2013). On 7 November 2013, the Appellant reported at the CMPB and registered for NS.

The decision below

9 On 15 May 2014, the Appellant pleaded guilty and was convicted on a charge of failing to comply with a notice to report for registration for NS, an offence under s 3(1) of the Act and punishable under s 4(2) of the Act. The prescribed punishment under s 4(2) of the Act is a fine not exceeding $10,000 or imprisonment for a term not exceeding three years, or both. Another charge of failing to report for fitness examination, an offence under s 33(*a*) read with s 5(*a*) of the Act, was taken into consideration for the purposes of sentencing.

10 The district judge below ("the DJ") sentenced the Appellant to two months' imprisonment (see *Public Prosecutor v Mohammed Ibrahim s/o Hamzah* [2014] SGDC 196 ("the GD")). The DJ was of the opinion that it would not be sufficient to impose a fine on the Appellant, considering the sentencing precedents for similar offences and the circumstances of the case. In particular, the DJ noted the following mitigating and aggravating circumstances:

(a) The Appellant was a youthful offender and had pleaded guilty. He also had no similar antecedent.

(b) The Appellant's offence was serious as he had failed to register for NS for slightly more than one year and three months.

(c) Although the default period was less than two years and the Appellant was young, consideration must be given to the fact that he was arrested pursuant to a Police Gazette cum Blacklist. This was an aggravating factor that warranted a custodial sentence.

(d) The Appellant's culpability was enhanced by his running away from his NS liability and also his absconding from the Hostel sometime in March 2011. The Appellant's allegation that he had absconded in order to earn money for his mother's medical treatment should not carry much weight in view of the public interest in this case.

The arguments on appeal

11 The Appellant, who appeared in person and without legal representation, argued that the sentence imposed by the DJ was manifestly excessive and that a fine should be imposed instead. He prayed for leniency so that he could take care of his family members, including his young daughter and his mother who had just recovered from cancer.

12 On the other hand, the position taken by the Public Prosecutor ("the Respondent") was that the sentence of two months' imprisonment was justified, notwithstanding that a custodial sentence was not sought by the Respondent in the proceedings below. The Deputy Public Prosecutor, Mr Tai Wei Shyong ("Mr Tai"), submitted that although the period of default in this case was less than two years, this was outweighed by aggravating factors such as the fact that the Appellant had deliberately chosen not to comply with the notice to report for NS registration and had not voluntarily surrendered himself to the authorities. Mr Tai submitted that these aggravating factors also served to distinguish this case from other precedents in which only fines had been imposed. Moreover, the Appellant's claim that he needed to work to support his family had no mitigating value.

13 Mr Chng, the *amicus curiae*, submitted that a custodial sentence was not warranted in the present case and that the Appellant's sentence of two months' imprisonment should be substituted with a fine. Mr Chng stated that, based on the sentencing precedents as well as the parliamentary statement made by the then Minister for Defence in January 2006 regarding NS defaulters (see [14] below), the starting point was that a jail sentence should only be imposed where the period of default is two years or more. As the present case was an unexceptional one and the Appellant's period of default was less than two years, only a fine should be imposed. In this regard, Mr Chng disagreed with Mr Tai that an intention to evade NS and a failure to surrender voluntarily should be considered aggravating factors justifying the imposition of a custodial sentence.

Our decision

14 The key question that arose in this appeal was whether the sentence of two months' imprisonment imposed by the DJ was manifestly excessive. In answering this question, we considered the relevant circumstances for the imposition of a custodial sentence instead of a fine for an offence under s 3(1) of the Act, and whether a custodial sentence was justified in the present case, where the period of default was less than two years. More specifically, we considered the effect of the 2006 Ministerial statement made in Parliament by the then Minister for Defence, Mr Teo Chee Hean ("the Ministerial Statement" and "the Minister", respectively), on the issue of NS defaulters and on whether the punishments provided for in the Act were adequate (see *Singapore Parliamentary Debates, Official Report* (16 January 2006) vol 80 at cols 2004–2018 (Teo Chee Hean, Minister for Defence)). The Ministerial Statement was recently analysed by the High Court in *Seow Wei Sin v Public Prosecutor and another appeal* [2011] 1 SLR 1199 ("*Seow Wei Sin*").

Significance of the Ministerial Statement

15 In the Ministerial Statement, the Minister explained that the Ministry of Defence ("MINDEF") intended to propose an increase to the maximum fine provided for in the Act from $5,000 to $10,000. This proposal was later submitted as a Bill to amend the Act, which Bill was passed by Parliament in April 2006 (see Enlistment (Amendment) Act 2006 (No 14 of 2006)).

16 The part of the Ministerial Statement that was often cited or relied on in sentencing stated that MINDEF would press for a custodial sentence in serious cases such as where the period of default was two years or longer. It also contained the Minister's illustrations of what MINDEF

considered to be appropriate sentences for offences under the Act (at cols 2014–2015). The abovementioned portion is reproduced below:

> 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.

17 To summarise MINDEF's position as expressed in the Ministerial Statement above, MINDEF would ordinarily press for a custodial sentence where the period of default was two years or longer. The appropriate length of the custodial sentence to be imposed in a particular case would depend on the defaulter's age and the extent to which the defaulter is able to fulfil his NS obligations.

18 The immediate question that arose was this: what effect should the Ministerial Statement have, if any, on the sentencing process? This was the exact issue considered in *Seow Wei Sin*. In that case, the High Court noted that, in line with the purposive interpretation of a statutory provision pursuant to s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), the court could, but was not obliged to, refer to extrinsic material such as parliamentary debates or statements made by a minister in Parliament to ascertain the meaning of a statutory provision (*Seow Wei Sin* at [19]–[20]). It was also stated that "under no circumstances should extrinsic material take the place of the actual words used in the statute"; and that such extrinsic material "can only be aids to interpretation" and "should not be used to give the statute a sense which is contrary to its express text" (*Seow Wei Sin* at [21]). The High Court went on to examine the actual wording of the relevant statutory provisions in the Act, before reaching the following conclusion (*Seow Wei Sin* at [24]):

> 24 It must be recalled that the Ministerial Statement was made in the context of Mindef's then imminent proposal to increase the maximum fine prescribed in s 33, and not for the purpose of explaining the scope of either of those provisions. Of course, it also set out Mindef's thinking as to the sentence it considered appropriate in what it regarded as serious cases. The Minister even stated that where "a 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". *However, as a matter of*

principle, unless such thinking is incorporated in the Act itself it should not ipso facto be followed by the court as a matter of course. Otherwise, it would mean that punishment imposed by the court would be governed by ministerial policy. In determining the appropriate punishment in each case, the court must not only consider all the circumstance including mitigating circumstances, but also the objectives of the law, the prevalence of such offences and the need to curb them. … [emphasis added]

19 We agree with the approach taken in *Seow Wei Sin*. 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.

20 Indeed, these observations were apt in the present case. As stated above, the Appellant was convicted of an offence under s 3(1) of the Act, which reads:

> The proper authority may from time to time by notice require a person subject to this Act to report for registration and for fitness examination for the purposes of service under this Act.

A failure to report for registration pursuant to s 3(1) of the Act is punishable under s 4(2) of the Act, which reads:

> Any person affected by a notice given under section 3(1) who, without lawful excuse, fails to present himself for registration in accordance with the notice 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.

Section 4(2) of the Act clearly states that if an accused person without lawful excuse fails to report for registration and for fitness examination in accordance with a notice given under the Act, he is guilty of an offence and liable to be punished with a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both. Evidently, this provision contains no restriction whatsoever as to how the court should exercise its discretion to sentence an accused person. Certainly, there is nothing in the Act that requires the court to impose a custodial sentence only when the period of default is two years or more.

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.

22 The general public policy considerations which apply to the Act and the need to ensure that all persons liable thereunder duly perform their NS duties were succinctly summarised in the case of *Lim Sin Han Andy v Public Prosecutor* [2001] 1 SLR(R) 643, where Yong Pung How CJ stated (at [18]) that:

> … 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.

Whether the Ministerial Statement applied only to overseas defaulters

23 By way of background, we should highlight that the Ministerial Statement was made in response to the public controversy which arose on account of the case of *Public Prosecutor v Melvyn Tan Ban Eng* (DAC No 14358 of 2005, unreported) ("*Melvyn Tan*"). The accused in that case, Melvyn Tan, had left Singapore in 1969 when he was 12 years of age to study music in England. He was granted deferment from NS but failed to return to Singapore after his deferment period had ended. He subsequently took up British citizenship in 1978 and was allowed to renounce his Singaporean citizenship based on the prevailing policy at that time. In 2007, Melvyn Tan decided to return to Singapore to look after his ageing parents. Upon his being charged in court for his NS defaults, he pleaded guilty and was sentenced to a fine of $3,000. This punishment was widely perceived by the public to be insufficient, and many expressed the concern that Melvyn Tan had been given special treatment.

24 In the course of the hearing before us, an issue arose as to the exact scope of application of the portion of the Ministerial Statement cited at [16] above. In particular, the contention was whether MINDEF's policy as stated by the Minister was meant to apply generally to all NS defaulters, or only to NS defaulters such as Melvyn Tan, who had left Singapore at a young age, defaulted on his NS obligations while abroad, and decided to return only much later. For ease of reference, we shall refer to the latter category of NS defaulters as "overseas defaulters", in contradistinction to what we shall term "local defaulters" such as the Appellant, who had never gone abroad to live but simply failed to report for registration for NS.

25 Mr Chng and Mr Tai were in agreement that the Ministerial Statement was intended to be of general application and that no distinction should be drawn between overseas and local defaulters in that regard. Mr Chng submitted that the typical overseas defaulter, despite being overseas, would have possessed knowledge of his NS obligations at some point, and should thus be regarded as culpable as the local defaulter in failing to report for registration for NS. He pointed out that while the Minister had referred to NS defaulters who had returned to Singapore from overseas, he had not actually drawn a distinction between overseas defaulters and local defaulters in so far as the two-year threshold for pressing for a custodial sentence was concerned. This view was shared by Mr Tai, who further highlighted that the portion of the Ministerial Statement cited at [16] above was made in the context of an overarching periodic review of the Act conducted by MINDEF and there was no indication whatsoever that the policy expressed in the Ministerial Statement was intended to apply only to cases where the NS defaulter had spent a significant amount of time overseas.

26 Having regard to the context and wording of the Ministerial Statement, we agreed with the interpretation taken by Mr Chng and Mr Tai. In so far as the Minister and MINDEF were concerned, it appeared that the period of default was the most significant factor to be taken into account in determining the appropriate sentence in a particular case, regardless of whether the accused person was an overseas defaulter or local defaulter. The Ministerial Statement was couched in terms of overseas defaulters since that was the pressing issue faced by Parliament at that time. There was nothing in the Minister's Statement to suggest that overseas defaulters were to be treated differently

from local defaulters; invariably so, given that the former was no less culpable than the latter. As Mr Chng pointed out, even overseas defaulters are usually aware of their NS obligations and this has been the situation in the vast majority of the reported cases.

27 In this vein, it is pertinent to note that s 30(3) of the Act provides that orders or notices that have been duly served on any person under the Act shall be deemed to have been received and read or heard by that person. Under s 30(6) of the Act, where a person has under s 30(3) of the Act been deemed to have knowledge of an order or notice issued under the Act, ignorance of the fact that the order or notice has been duly served on him is not an excuse for failing to comply with that order or notice. Therefore, even if an overseas defaulter claims not to have knowledge of an order or notice issued under the Act, in most cases this will not operate as a lawful excuse to exempt the NS defaulter from liability, although we recognise that in exceptional and genuine cases this fact could be a mitigating factor.

Sentencing precedents

28 We now turn to the relevant sentencing precedents under the Act. Three points should be noted at this juncture. First, it should be borne in mind that amendments were made to the Act with effect from 8 May 2006 to increase the maximum fine provided for in the Act from $5,000 to $10,000 (see [15] above). As was pointed out in *Seow Wei Sin* (at [26] and [29]), prior to the 2006 amendments to the Act, the courts had generally not imposed custodial sentences on first-time defaulters under the Act; it was only after the 2006 amendments came into force that the prosecution began pressing for custodial sentences for NS defaulters. Therefore, cases decided prior to these amendments should be read with the applicable legislative framework and prevailing prosecutorial policies in mind. That said, we would caution that the increase in the maximum fine introduced by the 2006 amendments should not *ipso facto* lead to the imposition of higher sentences than in the pre-amendment cases. In each instance, the court should consider all the relevant circumstances and impose a sentence that is proportionate to the culpability of the offender and the gravity of the offence.

29 Second, many of the precedents concerning NS defaulters dealt with overseas defaulters, and not local defaulters such as the Appellant. Nevertheless, following from our analysis above, we were of the view that no general distinction should be drawn in the sentencing approach towards overseas defaulters and local defaulters, since, in most cases, knowledge of the registration notice will not be an issue. In cases where the accused person does assert that he did not know of his NS obligations, it will be for the court to assess the claim and make findings on the available evidence.

30 The third point is that while there were relatively few cases concerning offences under s 3(1) of the Act, an analogy may be drawn with the cases concerning offences under s 33 of the Act, which prescribes the same punishment as s 4(2) of the Act for a s 3(1) offence (see [20] above). Section 33 of the Act is a general provision that covers offences of, *inter alia*, failing to comply with any order or notice issued under the Act and remaining outside Singapore without a valid exit permit. Section 33 of the Act reads:

> **Offences**
>
> **33**. Except as provided in section 32(3) and (4), any person within or outside Singapore who —
>
> (*a*) fails to comply with any order or notice issued under this Act;
>
> (*b*) fails to fulfil any liability imposed on him under this Act;

(*c*) fraudulently obtains or attempts to obtain postponement, release, discharge or exemption from any duty under this Act;

(*d*) does any act with the intention of unlawfully evading service;

(*e*) gives the proper authority or any person acting on his behalf false or misleading information; or

(*f*) aids, abets, or counsels any other person to act in the manner laid down in paragraph (*a*), (*b*), (*c*), (*d*) or (*e*),

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.

31 Generally, in cases under the Act involving short periods of default of around two years or less, only fines have been imposed. As was helpfully summarised in *Public Prosecutor v Mahurandhaga Thevar s/o Arul* [2014] SGDC 290 ("*Mahurandhaga*") at [76], in a number of unreported District Court cases decided after the 2006 amendments to the Act, namely *Public Prosecutor v Ian Nadriz Bin Mohamed Noor* (DAC No 8534 of 2011), *Public Prosecutor v Jass Sekhon* (DAC No 2398 of 2013), *Public Prosecutor v Teo Chen Hui George* (DAC No 2397 of 2013), and *Public Prosecutor v Kerry Trahan Jin Long Mathe* (DAC No 21507 of 2012), fines of between $600 and $2,000 were imposed in respect of periods of default ranging from about one year and seven months to slightly over two years.

32 In *Public Prosecutor v Shanthakumar s/o Bannirchelvam* [2008] SGDC 130 ("*Bannirchelvam*"), the accused pleaded guilty to a charge of remaining outside Singapore without a valid exit permit for a period of about one year and four months, with another similar charge taken into consideration for the purposes of sentencing. The accused had left Singapore to live in Australia with his family when he was eight years old. In May 2005, the accused was informed by MINDEF that he was liable for NS and was required to report for registration for the same. The accused's father subsequently applied for a deferment of the accused's NS duties pending the completion of his student exchange programme in New Mexico. However, this was rejected on the grounds that certain conditions had not been fulfilled. In September 2007, having completed his studies in New Mexico, the accused returned to Singapore and surrendered to the authorities upon arrival at the airport. He was charged with failing to fulfil his NS obligations by remaining outside Singapore from 8 May 2006 to 17 September 2007 (*ie*, a period of one year, four months and nine days) without a valid exit permit, an offence under s 33(*b*) of the Act.

33 In the District Court, the accused was convicted and sentenced to six months' administrative probation. The trial judge noted that although the sentencing precedents indicated that fines were generally imposed in the past for similar offences, she was minded to consider other sentencing options instead, given certain mitigating factors such as the accused's young age and co-operation with the authorities (*Bannirchelvam* at [26]). The trial judge did not think that a conviction recorded against the accused and the imposition of a fine would be appropriate given that the accused was a "promising young man with a bright future ahead", and therefore sentenced him to six months of administrative probation (*Bannirchelvam* at [33]).

34 On appeal by the prosecution, the High Court substituted this sentence with a fine of $1,500 with one month's imprisonment to be imposed in default (see *Public Prosecutor v Shanthakumar s/o Bannirchelvam* (MA No 52 of 2008, unreported)). The High Court judge in allowing the appeal observed that a probation order served no useful purpose in such cases since such offenders were

usually persons of good character who had placed their studies ahead of their legal obligations, and that as a matter of policy a consistent approach in dealing with offences under the Act was necessary.

35 It would therefore appear that cases involving short periods of default of two years or less will generally not attract a custodial sentence. In fact, no case was cited to us where an accused person who had defaulted on his NS obligations for a period of two years or less was sentenced to a term of imprisonment. On the contrary, there have certainly been cases where only fines have been imposed on accused persons who have defaulted on their NS obligations or remained outside Singapore without a valid exit permit for substantial periods of time (*ie*, more than ten years). However, such cases are few and far between and usually concern exceptional facts.

36 One such example would be the case of *Seow Wei Sin*, where the accused was charged for remaining outside Singapore for a period of 23 years and three months without an exit permit. As the offence was committed in 2001, the accused was dealt with under the pre-amendment version of the Act. The accused was sentenced to 18 months' imprisonment by the district judge; on appeal to the High Court, his custodial sentence was substituted with a fine of $5,000. The High Court noted that while the period of default *per se* was long, the accused's culpability was far from high given that he had left Singapore for Terengganu at the very young age of one and his late father was the person who dealt with the authorities in Singapore in respect of the accused's NS liability (*Seow Wei Sin* at [34]–[35]). Therefore specific deterrence was not a relevant consideration since the accused was by then no longer of an age where he could commit a similar offence in future, and this was also not a case that should be used to send an uncompromising message to other "like-minded" offenders (*Seow Wei Sin* at [38]).

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 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. This is why the Minister said in the Ministerial Statement that a jail sentence of up to the maximum of three years may be appropriate where the defaulter has reached an age when he cannot be called up for NS at all (see [16] above). On the other hand, a fine may suffice as punishment in a case involving a short default period whereby the defaulter can still fulfil his NS duties in full.

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.

Aggravating and mitigating factors

Aggravating and mitigating factors

39 In the present case, we did not find any compelling mitigating factors. The Respondent submitted that there were two aggravating factors, namely: (1) the fact that the Appellant had intentionally decided not to comply with the notice to register for NS; and (2) the Appellant did not voluntarily surrender himself to the authorities and would likely still be at large had he not been apprehended. The latter factor in particular was regarded by the DJ as an aggravating factor warranting a custodial sentence despite the fact that the default period in this case was less than two years. As the DJ stated in the GD at [8]:

> … Although the [Appellant] failed to register for NS for a period of 1 year 3 months 2 days and was young, I was of the view that consideration must be given to the fact that he was arrested pursuant to a Police Gazette cum Blacklist for failing to register for NS and undergo medical examination. Hence, although the default period was less than 2 years but because of this aggravating factor, I was of the view that a custodial sentence was warranted. …

40 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. In the context of the present case, an offence under s 3(1) read with s 4(2) of the Act is established by the simple fact that the accused person fails to present himself for registration in accordance with the notice, which he is deemed to have knowledge of pursuant to s 33(3) of the Act. Thus, if 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. The Respondent submitted that the only reason why the Appellant's period of default was not particularly long was because he had been apprehended by the police, and emphasised that he would very likely still be at large had it not been for his arrest. However, as we had pointed out during the course of the hearing, to take into account the fact that the Appellant had *not* voluntarily surrendered himself would be to enter into the realm of speculation; there would be no way of predicting when the Appellant would have surrendered had he not been apprehended by the police.

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 *Public Prosecutor v Chow Yee Sze* [2011] 1 SLR 481 at [14]), the lack of mitigating factors cannot be construed as an aggravating factor.

Conclusion

42 Having regard to the relevant sentencing precedents and the fact that there were neither aggravating factors against the Appellant nor mitigating circumstances in his favour, we considered that it would be inappropriate to punish the Appellant with a custodial sentence. Instead, we were of the view that a fine would operate as a sufficient deterrent for the Appellant as well as other like-minded individuals. This is especially so given that the Appellant has since registered for NS and will be fulfilling his NS obligations under the Act in due course. We therefore allowed the appeal and substituted the sentence of two months' imprisonment with a fine of $3,000, in default one week's imprisonment for each $1,000 (or part thereof) not paid.

43 Finally, it remains for us to express our profound thanks to Mr Chng, the *amicus curiae*, for the

invaluable assistance he had rendered to the court in this appeal.