IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 211

Magistrate's Appeal No 9166 of 2017

Between

Ho Mei Xia Hannah

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 22 of 2018

Between

Ho Mei Xia Hannah

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Newton hearings]
[Criminal Procedure and Sentencing] — [Sentencing] — [Mentally disordered offenders]
[Criminal Procedure and Sentencing] — [Sentencing] — [Young offenders]

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Ho Mei Xia Hannah
v
Public Prosecutor and another matter

[2019] SGHC 211

High Court — Magistrate's Appeal No 9166 of 2017 and Criminal Motion No 22 of 2018
See Kee Oon J
14 February; 6 April; 16 May; 1 October; 6 December 2018; 22 February; 3 May; 16 July 2019

10 September 2019

See Kee Oon J:

1 This was an appeal against the sentences imposed by the District Judge in *Public Prosecutor v Hannah Ho Mei Xia* [2017] SGDC 180 (the "GD") on the basis that they were manifestly excessive and wrong in principle.

2 Two main issues arose for determination in this appeal: first, whether the appellant's Persistent Depressive Disorder ("PDD") had a causal or contributory link to the commission of the offences, and, second, what the dominant sentencing consideration was in the present case.

3 The first issue arose following the appellant's Criminal Motion to admit a psychiatric report prepared by Dr John Bosco Lee ("Dr Lee") as well as the psychiatric reports from the Institute of Mental Health which had been applied for as of 24 April 2018. I admitted the evidence as I found that sufficient reasons

had been provided as to why the documents had not been produced earlier and they appeared to be relevant and credible. Subsequently, the respondent tendered a report by Dr Derrick Yeo ("Dr Yeo") from the Institute of Mental Health ("IMH") which I admitted in evidence as well. The two psychiatrists diagnosed the appellant to be suffering from PDD but diverged in their conclusions on whether there was a causal or contributory link between her PDD and the commission of the offences. As such, a Newton Hearing was convened and both psychiatrists underwent cross-examination on 22 February and 3 May 2019.

4 Having heard the psychiatrists and considered the evidence before me, I dismissed the appeal on 16 July 2019. I set out the grounds for my decision below.

Facts

5 The appellant pleaded guilty to three charges, which comprised a charge under each of the following provisions:

(a) s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA") for disorderly behaviour (enhanced) ("the s 20 MOA charge");

(b) s 332 of the Penal Code (Cap 224, 2008 Rev Ed) for voluntarily causing hurt to a public servant ("the s 332 Penal Code charge"); and

(c) s 6(3) of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) ("POHA") for using abusive words towards a public servant ("the s 6(3) POHA charge").

6 The District Judge sentenced the appellant to imprisonment terms of one week, 20 weeks, and two weeks respectively. The one week and 20 weeks' imprisonment terms were ordered to run consecutively, for a total of 21 weeks' imprisonment. Two other charges for voluntarily causing hurt to a public servant under s 332 of the Penal Code were taken into consideration for the purposes of sentencing.

7 All five offences took place at St James Power Station located at 3 Sentosa Gateway between 5.55am and 6.05am on 3 July 2016. The appellant shouted at the top of her voice and gestured wildly at another group of party-goers. This attracted the attention of Sgt Nasharhrudin bin Fasulludi ("Sgt Din"), who told the appellant to calm down. However, she continued shouting and behaving in a disorderly manner. This was the subject of the s 20 MOA charge. The appellant had been previously convicted under the same provision on 25 April 2016 and was therefore liable for enhanced punishment.

8 When she started to approach the group of party-goers she had been shouting at, Sgt Din intervened and told her that he was placing her under arrest for disorderly behaviour. As he attempted to handcuff her, she punched him, causing him to sustain a bruise that was 1cm in diameter over the left infraorbital region. This was the subject of one of the s 332 Penal Code charges which was taken into consideration for the purposes of sentencing.

9 Sgt Wilson Tang ("Sgt Tang") and his partner then assisted Sgt Din in handcuffing the appellant. While they were doing so, the appellant kicked Sgt Tang on the thigh and bit him on his right shoulder. Sgt Tang sustained a 2cm by 2cm hematoma over his right shoulder. The appellant's acts in voluntarily causing hurt to Sgt Tang constituted the offence in the s 332 Penal Code charge.

10 Thereafter, the appellant was handcuffed and handed over to Sgt Andy Tan Yong Hao ("Sgt Tan"), who was tasked to transport her to the police station. She continued shouting and Sgt Tan told her to keep quiet. She then kicked him on his left thigh with her right leg. This was the subject of the other s 332 Penal Code charge that was taken into consideration for the purposes of sentencing.

11 The appellant then uttered the abusive words "ni na bei chee bai", meaning "your mother's vagina", to Sgt Tan. This was the subject of the s 6(3) POHA charge.

12 After the appellant was placed in the police vehicle, she went on to say the following to Sgt Tan:

(a) "Blue shirt pui!"

(b) "Government dog!"

(c) "Earn 3k, can survive meh?"

(d) "Ni na beh chee bye!", meaning "your mother's vagina".

(e) "You drive so recklessly hope your mother and father die from your driving!"

(f) "Eh pull up my jacket la rapist!"

Decision below

13 The appellant was 20 years of age when she committed the offences and when she was convicted of the three charges. The District Judge observed that if the appellant's age had been the sole consideration, the predominant sentencing principle would be that of rehabilitation. However, the District Judge

applied the framework set out in *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") and went on to consider the nature of the offence and the offender: GD at [35].

14 On the nature of the offence, the District Judge held that the appellant's offences against police officers had to be viewed with grave disapprobation. Taking a firm response in cases involving violence against police officers would be in the public interest. The need for greater deterrent effect was additionally indicated by the prevalence of offences involving abuse of Home Team officers, which was evidenced by the statistics highlighted by the respondent: GD at [36] and [37].

15 The s 332 Penal Code offence involved the biting of an officer. Such assaults should be viewed as on the higher end of the spectrum in terms of severity and should warrant a heavier sentence. This was borne out by the precedents tendered by the respondent, in which the sentences imposed ranged from five to ten months' imprisonment. The District Judge placed weight on the number of offences involved as well: the appellant had assaulted three officers and was verbally abusive to Sgt Tan even after she had been physically subdued. She "displayed a complete disregard and almost contempt for the police officers": GD at [38], [39] and [43].

16 The appellant's previous conviction for disorderly behaviour was similar in that it too involved an encounter with police officers. She had been convicted on 25 April 2016 and sentenced to a fine of $1500. She committed the present set of offences barely two months later. Considering how quickly the appellant had reoffended and the escalated seriousness of the fresh offences, the District Judge concluded that the principles of general and specific

deterrence "far outweighed" that of rehabilitation. Accordingly, the District Judge held that a term of imprisonment should be imposed: GD at [46] to [51].

17 The respondent sought a term of eight months' imprisonment for the proceeded s 332 Penal Code charge. The District Judge observed that the present case of biting did not fall into the more severe category, where the offender is a carrier of a serious infectious disease or where an open wound injury was caused. The sentence should therefore be within the lower end of the five to six-month range. On the other hand, the District Judge took into account the fact that the appellant had kicked and punched three officers, as well as her previous conviction for disorderly behaviour. Balancing this against the appellant's plea of guilt, young age, and the fact that this would be the appellant's first period of incarceration, the District Judge imposed a sentence of 20 weeks' imprisonment for the s 332 Penal Code charge: GD at [52] to [54].

18 A sentence of one week's imprisonment was imposed for the s 20 MOA charge, for which the appellant was liable to enhanced punishment. With regard to the s 6(3) POHA charge, the District Judge observed that the appellant had directed her abusive words at a police officer for a protracted period and had shown no remorse despite being arrested. The precedents tendered by the respondent showed sentences which ranged from a fine of $3000 to two weeks' imprisonment. Two weeks' imprisonment was imposed, to run concurrently with the other sentences. The total sentence was therefore 21 weeks' imprisonment: GD at [55] to [57].

The Newton hearing

19 While both Dr Yeo and Dr Lee diagnosed the appellant with PDD, they disagreed on whether there was a causal or contributory link between her

condition and her commission of the offences. For present purposes, I briefly summarise their respective positions, which will be set out in greater detail below.

20 Dr Yeo characterised the appellant's PDD as mild. He stated in his report that "there was no substantive contributory link between [the appellant's PDD] and the commission of the alleged five offences". When questioned by the court, he clarified that his opinion was that there was *no* contributory link.

21 In Dr Yeo's view, the appellant's PDD would not have affected her cognitive ability to know what she was doing, or her volitional control of her actions. Indeed, the circumstances at the time of the offence showed that she was aware of both the nature and the wrongfulness of her actions. This was indicated both by the account provided by the appellant to Dr Yeo, as well as the Statement of Facts ("SOF") she pleaded guilty to.

22 On the other hand, Dr Lee concluded that the appellant's aggressive behaviour towards the police officers was significantly caused by the emotional lability and irritability of her mental disorder. According to his report, the appellant claimed that her anger had overwhelmed her at the material time, and that the situation triggered strong emotions which were similar to those she felt towards her father and mother. His opinion appeared to have been that the appellant acted impulsively and with diminished concern for the consequences of her conduct. While the appellant had some control, her mental disorder contributed to the offences by impairing her ability to assess the situation:

> There is some control, and that is why cognitively, she is not unsound, but the emotional volition, the---the---the ability to assess the situation, "Hey, is this a right situation," a 1.46 metres girl facing three policemen at 6.00am, I considered that and I took that into deep deliberation.

The parties' submissions on appeal

The appellant's submissions

23 The appellant submitted that probation was a more appropriate sentence, failing which, other community based sentencing options should be considered. The appellant referred to *Public Prosecutor v Lim Chee Yin Jordon* [2018] 4 SLR 1294 ("*Jordon Lim*"), in which it was observed that rehabilitation generally takes precedence where young offenders are involved, and that the existence of a mental condition that is causally linked to the commission of the offence may displace the need for deterrence (at [30] and [37]). She then asserted that she would be a "good candidate for the calling of a probation report". The written submissions highlighted the appellant's young age, difficult personal background and circumstances, as well as her "good character". The appellant had not undergone probation before and had not re-offended since.

24 The appellant argued, on the basis of Dr Lee's evidence, that there was a significant contributory link between her PDD and the offences. This was a slight departure from Dr Lee's opinion that the offences were "significantly caused by the emotional lability and irritability" of her PDD. While the respondent relied on the fact that the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Publishing, 5th Ed, 2013) ("DSM-5") does not indicate that aggression is connected to PDD, this was not conclusive. The DSM-5 provides diagnostic criteria for, and not the possible effects of, PDD. In any event, the DSM-5 states that children and adolescents may experience irritable mood and the appellant had been an adolescent at the time of the offences. This was apparently significant in part because levels of depression, anxiety, stress and impulsivity decrease with age. According to the appellant, Dr Lee had shown that there are "connections" between PDD,

aggression, irritability and impulsivity. As such, "[t]here must be some level of contributory link" between the appellant's mental condition and the offences.

25 On the other hand, Dr Yeo's evidence had changed on the stand: while his report stated that there was no *substantive* contributory link, his oral evidence had been that there was *no* contributory link. The inference to be drawn from his report was that he intended to say that there was a non-substantive contributory link. Further, his recommendation that the appellant receive follow-up treatment from the prison psychiatrist meant that the appellant's condition "was or could be fragile or severe" as opposed to mild. Dr Yeo's evidence that the appellant had suffered from a depressed mood and had "associated features" was interpreted by the appellant to mean features such as aggression, irritability and impulsivity.

26 The appellant then addressed me on how the factors identified at [60] of *Public Prosecutor v Yeo Ek Boon Jeffrey and another matter* [2018] 3 SLR 1080 ("*Jeffrey Yeo*") should be applied to the s 332 Penal Code offence which she had committed. She argued that the hurt caused was minimal, and that she had not used any weapon in committing the offence. The offence was committed while she was 20 years old and an adolescent. While she had been convicted of a s 20 MOA charge prior to the commission of the present offences, it was possible that that had also been contributed to by her subsisting mental condition. The offences were not premeditated, and the appellant did not intend to get in the way of the police officers' efforts at crowd control, or to cause more serious injuries to the officers. This was evidenced by the minor injuries suffered by the officers. She reacted without realising the consequences of her actions because she felt hurt and grievously offended by the teenagers who had provoked her. While the respondent cited alarming statistics of abuse against police officers, the present case was distinguishable given the appellant's unique

profile and mental condition. Dr Lee assessed her risk of recidivism to be "markedly low" as long as she complied with therapy.

27 On the s 6(3) POHA offence, the appellant claimed that she had only uttered the vulgarities at Sgt Tan within the confines of the police car rather than in public. She had not intended to undermine the authority of the officers and a deterrent sentence was therefore unnecessary. Instead, the abusive words "slipped her tongue", mostly as a result of her foolish impetuousness.

The respondent's submissions

28 The respondent characterised the appeal as being premised on the appellant's argument that rehabilitation takes centre stage. In contrast, the respondent's position was that specific and general deterrence were the dominant sentencing considerations in the present case.

29 There was no contributory link between the appellant's PDD and the offences committed, and Dr Yeo's evidence ought to be preferred over Dr Lee's. In particular, Dr Lee's evidence was devoid of reasoning, partisan, and ought to be rejected in its entirety. In contrast, Dr Yeo's evidence was clear and cogent. He testified that PDD does not predispose a person to anger, aggression or violence. While the appellant had been 20 years old at the time of the offences, she had been functioning as an adult, and her age accordingly did not have any bearing on the effect of her PDD on her behaviour. Having considered the nature and severity of the appellant's PDD and her conduct at the material time, Dr Yeo came to the reasoned conclusion that there was no contributory link between the appellant's PDD and her offending.

30 The offences involved violence against public servants and stiff sentences would be necessary to deter like-minded offenders: *Public Prosecutor*

v Law Aik Meng [2007] 2 SLR(R) 814 at [24(a)]. Attacks against police officers can have undesirable consequences at a societal level: *Jeffrey Yeo* at [49]. While the appellant was 20 years old at the time of the offences, this was merely one of the *many* factors that had to be taken into account by the court, having regard to her circumstances in life. As noted by Dr Yeo, the appellant was in fact functioning as an adult and ran her own business. The offences were not a result of youthful folly – instead, the appellant was defiant and belligerent throughout the entire encounter.

31 Even though the actual injury caused was relatively minor, the potential and psychological harm that arises from an assault by biting should not be discounted. The respondent further described the appellant's culpability as having been "high". First, the s 332 offence involved the appellant biting the officer on his shoulder and kicking him in the thigh. Biting was said to be akin to the use of a weapon that can cause serious injury to the victim – it has similar potential to cause more than superficial injury, and carries with it the risks of transmission of bacteria and infectious diseases. Second, the appellant's behaviour demonstrated contempt for the officers and their authority. The appellant's claim that she felt "bullied and exploited", momentarily lost her temper, and acted impulsively was not believable in the circumstances. Third, the offence was committed within the public's view and hearing. Fourth, it was a sustained attack on three officers. Finally, the appellant had a similar antecedent.

32 As the appellant's culpability was reduced by her relatively young age, she fell within the higher end of Category 1 of the *Jeffrey Yeo* framework for s 332 Penal Code offences. The sentence of 20 weeks' imprisonment was at the lower end of the sentencing range indicated by the precedents and could not be

described as excessive given that two other s 332 Penal Code charges had been taken into consideration.

33 The one-week imprisonment term imposed for the s 20 MOA charge was appropriate given the appellant's previous conviction for disorderly behaviour, which likewise involved an encounter with police officers. The s 6(3) POHA offence involved the appellant using abusive language that was targeted at the officer's role as a police officer, and the two-week sentence imposed was not manifestly excessive.

34 Following *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*"), it was appropriate for the District Judge to order consecutive sentences involving the s 332 offence and one other offence. As I understood it, this was a reference to [77] of *Shouffee*, where it was held that the aggregate sentence should exceed the longest individual sentence imposed. The District Judge had chosen to order the shorter s 20 MOA sentence to run consecutively, and this was fair and appropriate in the circumstances.

Issues to be determined

35 As outlined at [2] above, the main issues to be determined in this appeal were:

(a) whether the appellant's PDD had a causal or contributory link to the commission of the offences, and, if so, what weight ought to be accorded to this; and

(b) what the dominant sentencing consideration was in the present case.

36 I considered these factors holistically, taking into account the other relevant circumstances in determining whether the sentence imposed by the District Judge was appropriate or manifestly excessive.

The relevance of the appellant's PDD

The applicable legal principles

37 An offender's mental condition is generally relevant to sentencing where it lessens his culpability for the offence: *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 ("*Chia Kee Chen*") at [112]. The extent of this relevance is dependent on factors such as the nature and severity of the mental condition and the impact of the offender's mental disorder on the commission of the offence (*Chia Kee Chen* at [112], citing *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") at [25] and [52]). The fact that an offender suffered from a mental disorder may be relevant both to the court's assessment of his or her culpability as well as the weight that should be placed on the sentencing principles of general and specific deterrence: see *Public Prosecutor v ASR* [2019] 1 SLR 941 ("*ASR*") at [71] to [72] and [115]; *Lim Ghim Peow* at [26]; *Chong Yee Ka v Public Prosecutor* [2017] 4 SLR 309 ("*Chong Yee Ka*") at [82].

38 Assessing the extent and nature of an alleged contributory link between an offender's mental condition and the commission of the offences invariably requires that the court consider the expert opinion of a psychiatrist. I observed in *Chong Yee Ka* at [54] that there may be cases in which an ostensible difference of opinion or disagreement in fact turns on semantics or matters of expression. In the present case, this can be seen from the appellant's submissions on whether Dr Yeo's stated conclusion that there was no substantive contributory link meant that there was no contributory link at all. As

such, little turns on the express terms chosen by the expert, and it is his or her reasoning that is persuasive and carries weight. That said, as I emphasised at the hearing of this appeal, a *causal* link is conceptually distinct from a *contributory* link, and these should be distinguished: see [64] of *Chong Yee Ka*.

39 In this regard, I noted that previous courts have set out principles relating to expert evidence. Psychiatrists should endeavour to state their opinions as definitively and clearly as possible, avoiding ambiguity and minimising room for subjectivity in interpretation (*Chong Yee Ka* at [49], cited in *Chia Kee Chen* at [119]). Further, an expert must be neutral and independent, and must provide the reasoning behind his conclusions. An expert report which does not do so and cannot be probed or evaluated is useless and prone to be rejected (*Chia Kee Chen* at [117] to [119]). Where there is a conflict of opinion between two psychiatrists, it falls to the court to decide which opinion best accords with the factual circumstances, and is consistent with common sense, objective experience, and an understanding of the human condition: *Chong Yee Ka* at [52].

40 The legal significance of any contributory link identified by the psychiatrists is a question to be decided by the sentencing court. It has been consistently accepted that the following types of impairment would be relevant in determining the weight that should be accorded to deterrence, and in assessing the offender's culpability:

> (a) where the mental disorder affects the offender's capacity to exercise self-control and restraint, as in *Public Prosecutor v BDB* at [2018] 1 SLR 127 at [72] and *Chong Yee Ka* at [82]; and

(b) where the mental condition diminishes the offender's ability to appreciate the nature and wrongfulness of his conduct: see *Lim Ghim Peow* at [36]; *Chong Yee Ka* at [83]. This may relate to the offender's knowledge of the legal or moral wrongfulness of his actions (*ASR* at [108] to [110]; cited in *Public Prosecutor v Low Ji Qing* at [2019] SGHC 174 at [46]).

41 Lastly, it would be apposite to make a few observations on other factors which may be related to the offender's mental disorder. This may include factors such as the offender's personal background and personality attributes. In the present case, Dr Yeo testified that the appellant had demonstrated some personality traits which could have contributed to the offence. However, he was careful to distinguish these traits from any form of disorder, including personality disorders.

42 I think it clear that neither the offender's personal background, nor her personality traits, are in and of themselves mitigating in any way. This is in part reflected by the importance that courts have placed on the need to show that the offender suffered from a recognised or established mental disorder at the time of his criminal acts: see *Public Prosecutor v P Mageswaran and another appeal* [2019] 1 SLR 1253 at [52] and [53]. This general principle can be contrasted with cases such as *Ng Hai Chong Brandon v Public Prosecutor* [2019] SGHC 107 ("*Brandon Ng*"), where Dr Stephen Phang opined that the offender's psychiatric history rendered him an at-risk individual who was vulnerable to stress, had poor coping skills, and predisposed him to behaviour such as that which resulted in the offence. The offender's personal circumstances, such as his daughter's serious illness, were described as a stressor at the material time (*Brandon Ng* at [31]). In such cases, the offender's personality traits and circumstances are relevant to the court's assessment because they affect the

manner and extent to which the mental disorder itself contributed to the offences committed: see *Brandon Ng* at [41]. In my view, this interaction between the offender's personal circumstances and/or traits with his mental disorder should be identified and explained by the psychiatrists rather than speculated upon by either the parties or the court.

43 I turn now to apply these established principles to the present case.

My decision

44 As I stated at the hearing on 16 July 2019, I concluded that little weight ought to be accorded to the evidence of Dr Lee. On balance, I was not persuaded that the appellant's PDD had caused or contributed to her commission of the offences.

Weight to be accorded to Dr Lee's report

45 In its submissions, the respondent urged the court to reject Dr Lee's evidence in its entirety. This was on the basis that Dr Lee's findings were partisan and devoid of reasoning, and that he demonstrated a propensity to misrepresent, exaggerate and obfuscate his evidence. Assessed as a whole, I agreed that there was ample reason to doubt Dr Lee's neutrality and independence, as well as the cogency of his conclusions.

46 The respondent first argued that Dr Lee's lack of neutrality was evident from the fact that he chose to rely on self-reported information by the appellant without independent verification. Dr Lee agreed that the appellant's account had to be carefully scrutinised, and that one way of verifying her account would have been to ask for the views of independent witnesses. Despite this, he only interviewed the appellant, her mother, and her then-boyfriend ("Randy"). He

then went on to give various reasons for being unable to interview other people, such as that he could not because the appellant had no colleagues, ex-colleagues or friends from secondary school. While the reasons provided appeared to have been questionable, the mere fact that Dr Lee had not interviewed other people or that he proceeded to defend his decision not to do so in this manner did not indicate that he was not neutral or independent. For example, Dr Yeo, against whom no such allegations had been made, only interviewed the appellant, Randy, her mother, and her maternal aunt. Equally, it could be said that none of these individuals would have given an independent account. Therefore, while I agreed that it was relevant to consider the extent to which the appellant's self-reported information had been corroborated by independent sources, and that this affected the weight that ought to be accorded to the expert's evidence, this did not, on its own, necessarily indicate that Dr Lee was partisan.

47 More troubling was the fact that Dr Lee had knowingly omitted relevant information from his psychiatric report. Two versions of Dr Lee's report were tendered: the first was a draft and unsigned report dated 15 October 2017, and the second was a signed report dated 10 February 2018. The former report was brought to Dr Yeo's attention by the appellant, and eventually produced by the respondent at the Newton Hearing. These reports differed in two aspects. First, the reference to the appellant having experimented with "ICE" was removed and replaced with a statement that the appellant was not using any illegal psychoactive substances. Second, Dr Lee's recommendation that a Mandatory Treatment Order be considered was removed. In its submissions, the respondent focused primarily on the former disparity. I agreed that this seriously affected Dr Lee's credibility and tended to indicate that he had acted in breach of the duties he owed the court.

48 Dr Lee testified that drug abuse is relevant in *all* psychiatric cases. Additionally, in the context of discussing the association between aggression and depression, he testified that a key compounding factor for aggression is that of substance use, which could cause a person to be more aggressive. Despite this, Dr Lee removed the reference to the appellant's previous drug use after he was told by the appellant's then-counsel that it was "immaterial" to the present case. He admitted having deliberately amended the report and including a statement that she was not currently using illegal substances because that was consistent with the narrative he wanted to put forward, *ie*, that the appellant was a good person. The psychiatric report was meant to contain his expert opinion on the appellant's mental disorder. If the appellant's drug use was in fact relevant to his assessment of the appellant's mental condition and whether it contributed to the offences, it was incumbent on him as an expert who owed duties of independence and neutrality to the court (see *Chia Kee Chen* at [5]) to include this fact.

49 When asked whether he had been "fair and honest to the court" by taking out the reference to the appellant's previous drug abuse, he stated that he had been, as he was "open to clarification". This was an unsatisfactory response. In so far as the appellant's drug abuse was relevant, the amended report was clearly misleading. This was evident when seen in the context of Dr Lee's evidence that he did not ask the appellant how long it was before the offence that she last took drugs. In contrast, Dr Yeo's report stated that the appellant had admitted to using "Ice" intermittently for about six to eight months when she was about 20 years of age. This was pertinent especially since the offence had been committed when the appellant was 20 years old. In my opinion, Dr Lee's conscious decision to omit relevant information reflected negatively on his objectivity and independence, and consequently on the weight that should be given to his report.

50 I agreed, further, that Dr Lee's "recommendation" that the court look upon the appellant's case with "great compassion" went beyond his remit as an expert. This follows from the Court of Appeal's holding in *Chia Kee Chen* at [5] that experts are *duty-bound* to be neutral and independent, and to assist the court rather than to advocate for a cause in a partisan manner, regardless of how sincerely the expert may sympathise with the cause of his client. The seeking of "compassion" goes beyond propounding and pressing home the medical opinion he sought to persuade the court to accept: see *Chia Kee Chen* at [117], citing *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [70]. It was immaterial that Dr Lee's recommendation for compassion related in part to the "origin [and] effects of her mental disorder". In any case, according to Dr Lee, the origin of her mental disorder apparently related to her difficult personal circumstances.

51 The respondent then submitted that Dr Lee included irrelevant information in his report, such as verbatim quotes from her mother and Randy for the sole purpose of evoking sympathy for the appellant, *eg*, "very cute, very adorable, very smart". A large part of Dr Lee's report (paras 13 to 33) was dedicated to the appellant's background history without any analysis of how this was relevant. I agreed that disproportionate emphasis was placed by Dr Lee on the appellant's personal circumstances, both in his report and his oral evidence. Regrettably, Dr Lee had allowed his personal sympathies for the appellant to unduly influence the manner in which he had written the report, as illustrated by his explanation that he had been trying to let the court understand that the appellant was actually a "very frightened young lady". On the other hand, Dr Yeo's evidence that the appellant's personality could not be determined by solely considering the *verbatim* comments of Randy, who had then known the appellant for less than two years, was logical and persuasive. In any event, the

quotes from Randy and the appellant's mother did not appear to have a strong link to the appellant's mental condition or the offences committed.

52 I therefore agreed with the respondent that Dr Lee was a partisan witness who sought to confirm his own bias. It was apparent that he had formed a view virtually from the outset that the appellant was a "very frightened young lady" who deserved sympathy and "great compassion" from the court rather than punishment. His evidence was skewed towards achieving that end.

53 Dr Lee's evidence was in any event imprecise and, at points, inaccurate. He first testified that the appellant had "hit many people" but never her younger brother, Harold. Under cross-examination, Dr Lee clarified that he had *not* intended to give the impression that she would hit many other people, and stated that he did not know of any physical violence directed at anybody other than the appellant's mother and Randy. Even the latter assertion that the appellant had been physically violent to Randy and her mother had not been included in his report, purportedly because he did not think it significant. The lack of precision was apparent from his obfuscatory answers throughout cross-examination: when asked whether there was anything in the report which suggested that the appellant had been violent, he referred the court to paragraphs on the appellant's temper, as well as the violence exhibited by her father. These were obviously distinguishable and unhelpful.

54 Equally unhelpful was Dr Lee's repeated reference to the appellant's diminutive stature and why he felt this was relevant in assessing how her PDD had resulted in her aggressive behaviour. Dr Lee's view appeared to be that a petite "1.46 metres girl", to use his description, would not ordinarily have reacted so aggressively when being apprehended by three policemen (as highlighted at [22] above). I did not see how the appellant's height was a

relevant consideration at all, and Dr Lee did not point to any scientific basis for his assessment, a point which I shall elaborate on below at [75].

55 Finally, I noted that Dr Lee's evidence was also verifiably inaccurate at points. He wrote in his report that the appellant had completed her "O" levels *and* a diploma in law and repeated this evidence in court. These led him to opine that she had shown "remarkable resilience and initiative". In fact, the appellant had attained neither of those two qualifications. A perusal of Dr Lee's clinical notes demonstrated that the appellant had informed him that she did *not* complete her "O" Levels. This was also stated in Dr Yeo's report, which Dr Lee claimed to have read. In the circumstances, it appeared that Dr Lee was not merely careless; his attitude towards the truth was cavalier. This further undermined his credibility.

56 I thus concluded that Dr Lee's evidence ought to be viewed with great circumspection. I turn now to directly address the alleged contributory link in light of this finding.

Whether the appellant's mental disorder contributed to the offences

57 Two points may be noted at the outset. First, according to the appellant, Dr Yeo's report should be taken to mean that there was a contributory link, even if not a substantive one. This argument was unhelpful. Even if I accepted that there was *some* insignificant contributory link, the weight that should be given to the appellant's mental condition would depend on both the nature and extent of the contributory link as indicated above at [37] and [40]. This being the case, the appellant's argument that Dr Yeo's opinion was actually that there was some, non-substantive contributory link would not have taken her very far. In any event, it was clear that Dr Yeo's consistent position had always been that

the appellant was cognisant of the nature and wrongfulness of her actions, and that she had cognitive and volitional capacity to control her behaviour at the material time. His conclusion that there was no contributory link followed from this line of reasoning.

58 Second, the appellant's stated position that there was a significant contributory link between her mental condition and the offences was distinct from that of Dr Lee, who had opined that there was a significant *causal* link. Since counsel clarified at the 16 July 2019 hearing that the appellant's position was that there was a "substantial enough" contributory link, I proceeded on this basis.

59 The respondent and Dr Lee agreed that four factors should be considered in determining whether a mental condition contributed to the commission of an offence. These were: the nature of the mental disorder; the nature of the offender, *eg,* her past behaviour and conduct; the manner and circumstances of the offending; and the nature of the offence. The third and fourth factors appeared to overlap significantly, and, indeed, the respondent did not distinguish between them in its submissions. I broadly adopted this approach in coming to my decision as it appeared to be both consistent with the relevant authorities, and to impose greater analytical clarity.

(1) Severity of the mental disorder

60 In determining the extent of any contributory or causal link between a mental disorder and the commission of an offence, the severity of the mental disorder will invariably be a relevant consideration. This is consistent with the authorities cited above at [37].

61 In the present case, I accepted Dr Yeo's evidence that the appellant's PDD was mild. Despite the fact that Dr Lee offered no contrasting assessment, the appellant submitted that her condition "was or could be fragile or severe" as opposed to mild. I did not accept this submission as there was no evidence that Dr Yeo's assessment was erroneous.

62 The appellant's assertion was primarily based on the fact that Dr Yeo had recommended that she receive follow-up treatment in prison. Dr Yeo, when asked, explained that he had been trying to ensure that the appellant, who had a genuine mental disorder, would receive continued care especially since she had been pregnant at the time of his interview. Moreover, there was a risk that she could develop post-natal depression after delivery, or that her mental state would deteriorate if she were to be incarcerated and separated from her baby. These were plausible reasons for his recommendation of continued treatment that did not relate to the severity of the appellant's PDD.

63 Moreover, in so far as Dr Lee testified that the appellant's PDD had affected her socio-occupational functioning, this was speculative and unfounded. His report stated that the appellant had "problems controlling her anger and volatile mood [and that] these affected her socio-occupational functioning". While Dr Lee orally asserted that the appellant's personal interactions with her family, friends and colleagues, as well as her ability to get jobs were affected, he admitted that he did not have any evidence of her being affected in her dealings with people other than her family members. Instead, he relied on assertions such as "of course, it affect[ed] [the appellant]", that the appellant "could have done a lot better", and that he "would have expected some difficulty" in her organisation of sales events. These appeared to be hypothetical, generalised statements that did not result from an examination of the particular offender in the present case. The appellant had been running an

online business, organising events and attending parties with friends. Dr Lee also testified that the appellant had not told him that she experienced any difficulty interacting with people in her various jobs. His evidence that her socio-occupational functioning had been impaired therefore appeared to be entirely speculative and at odds with the objective evidence. I thus saw no reason to disbelieve Dr Yeo's assessment that the appellant's PDD was mild.

(2) Nature of the mental disorder

64 A key point of contention was whether PDD is associated with aggression, irritability, impulsivity and/or violence. This was relevant in assessing whether the appellant's PDD could have contributed to the offences. The symptomology, risk factors and characteristics of the mental disorder are relevant in determining whether there was a *possibility* the appellant's PDD contributed to the commission of the offences. Whether there was *in fact* such a contributory link will invariably turn on the facts of each specific case.

65 Dr Yeo testified that PDD does not predispose a person to anger, aggression or violence. Referring to the DSM-5, Dr Yeo stated that the patient must have a background of PDD with a clinically diagnosable intermittent major depressive episode to possibly exhibit the features of irritability, aggression and impulsivity. He further testified that he did not believe that PDD affects impulse control. In its submissions, the respondent further noted that aggression is not one of the risk factors or criteria for PDD.

66 In contrast, Dr Lee's evidence was that depressive disorders are associated with mood changes, which include irritability. He then testified that depression was a risk marker for aggression, and that depression is associated with impulsivity, and impulsivity with aggression. Under cross-examination, he

stated that not every person diagnosed with depression will display aggressive and violent behaviour, and that these are instead "possible characteristics". Levels of depression, anxiety, stress and impulsivity decrease with age, which was relevant since the appellant was an adolescent at the time of the offences.

67 Dr Lee relied on three articles in support of his evidence. I was not persuaded that these articles were helpful, or that they put forth accepted medical principles of general applicability. Crucially, none of these articles referred to studies which specifically considered persons suffering from PDD. In fact, two of the articles (Bettina F. Pilo and Tamás Pinczés "Impulsivity, depression and aggression among adolescents", *Personality and Individual Differences* 69 (2014) 33-37 ("the second article") and Ahmed A. Moustafa et al "Impulsivity and its relationship with anxiety, depression and stress" *Comprehensive Psychiatry* 74 (2017) 173-179 ("the third article")) referred to studies conducted with participants who had *not* been clinically diagnosed with any depressive disorder. The first article Dr Lee referred me to (Donald G. Dutton and Christina Karakanta "Depression as a risk marker for aggression: a critical review", *Aggression and Violent Behaviour* 18 (2013) 310-319) ("the first article") did not distinguish between types of depressive disorders. This diminished the utility of these articles given that it is clear there are significant differences between the various forms of depressive disorder. For example, as pointed out by the respondent in cross-examination, the DSM-5 explicitly states that persistent anger may be reported by individuals with Major Depressive Disorder, although no such feature is noted in respect of PDD.

68 Significant limitations were acknowledged in each of these articles which diminished their utility in the present case. Indeed, the first article found that depression as a risk marker for aggression may stem from a *third factor* such as personality disorder, insecure attachment or genetics. The second and

third articles, which relied on self-reported data and called for further studies to be done, similarly did not claim to demonstrate causal relationships between depression, age, impulsivity and aggression.

69 Finally, it appeared to me that the propositions advanced by Dr Lee were not sufficiently precise: in this regard, I noted that the third article referenced a study which found that non-planning impulsivity, which involves a lack of future planning, was more associated with depression. This was as opposed to motor impulsivity, which was described as the tendency to act on the spur of the moment and said to be more strongly correlated with mania. The former type of impulsivity was not material for present purposes, and Dr Lee in fact testified that the appellant had been saving money and planning for her future. Further, one view cited in this article was in fact that impulsive and maladaptive coping styles could increase depressive levels, as opposed to the converse relationship suggested by Dr Lee (*ie,* that the appellant's PDD caused her to act rashly or aggressively). I therefore did not accept that impulsivity, anger or aggression are characteristics or risk factors of PDD.

70 I was, however, prepared to accept that irritable moods may be a feature of PDD, particularly where an adolescent is concerned. In this connection, I noted that the respondent appeared, at least at points, to take a slightly different position from Dr Yeo on whether irritability was a feature of PDD. Mr Nair, in cross-examination, stated that it was clear that "irritability is common [to] all depressive disorders". This was apparently in contrast to anger and violence, which were not highlighted as features of PDD. This indeed appears to be what the DSM-5 suggests. Moreover, as the appellant noted in its submissions, the DSM-5 specifically states that children and adolescents with PDD can have irritable mood. That said, I did not place much emphasis on this. Even if *some* patients with PDD exhibit irritable moods, it was not clear that the appellant

was one of them. Instead, Dr Yeo testified that the appellant had personality traits which could have contributed to the offences, but that did not amount to a disorder. As I observed at [42] above, personality traits of the offender would generally not be mitigating absent a clear link to a recognised medical condition. Dr Lee made no credible attempt to distinguish between personality traits and any irritability that allegedly resulted from her PDD.

71 Second, even if the appellant experienced irritable moods, this did not necessarily suggest that she was either incapable of appreciating the nature of her wrongful conduct, or that it impaired her cognitive and volitional control. Insufficient evidence was led by the appellant on this point, as I explain in more detail below. Third, Dr Yeo's opinion was that the appellant at 20 years of age had already been functioning as an adult and ought not to be treated as an adolescent. I therefore placed little weight on any irritability purportedly caused by the appellant's PDD.

(3) Nature of the offender

72 I turn now to examine what the respondent referred to as the "nature of the offender". Dr Lee agreed with the respondent that in assessing whether a mental condition contributed to the offence, the offender's past behaviour and whether she had, for example, been able to exercise great self-control in the past would be relevant. This coheres with the approach I adopted in *Chong Yee Ka* at [61], where I considered whether there had been previous acts of abuse in assessing the extent to which there had been a contributory link between the mental disorders and assaultive behaviour.

73 There was limited evidence that the appellant had ever been physically violent prior to committing the offences. While there was some suggestion by

Dr Lee that she had been violent on previous occasions, I placed no weight on these assertions. As I have explained above, I found that Dr Lee's evidence was not credible. Further, as the respondent submitted, it is unclear whether Dr Lee meant *physical* violence, especially since he appeared to have interpreted "violence" very loosely to include verbal violence. Any previous acts of violence had also, in Dr Lee's opinion, been minor incidents that were not even worth mentioning in his report. In fact, Randy had told Dr Lee that the appellant would not harm others unless they harmed her first, *eg*, by taking her for granted. Dr Yeo's report stated that Randy had said that the appellant had never been violent towards him or her family members. It therefore appeared that any violent behaviour exhibited by the appellant had only been directed at her mother: in this regard, the appellant's mother in fact told Dr Lee that the appellant had only been violent towards her and possibly to Randy. These accounts would suggest that any prior violent incidents were targeted and deliberate, and not the result of a diminished capacity to exercise self-control.

(4) Manner and circumstances of offending

74 Dr Yeo concluded that there was no contributory link between the appellant's PDD and the offences. In his report, he explained that this was because the account provided to him by the appellant demonstrated that she was cognisant of the nature and wrongfulness of her actions. The appellant claimed that she was able to stop resisting the police once she became aware of their identities, showing that she had the cognitive and volitional capacity to control her behaviour at the material time. When referred to the SOF which the appellant had admitted to, Dr Yeo testified that it "embolden[ed]" his opinion that there was no substantive contributory link. The fact that the appellant had been shouting and gesturing at another group of party-goers indicated that she had cognitive control of her actions. Paragraph 5 of the SOF showed that the

appellant had been counselled and advised by a police officer to calm down, which meant that there would have been time for the appellant to consider who was speaking to her. Finally, the vulgarities referred to in paragraph 14 of the SOF corroborated the fact that the appellant was aware she was speaking to police officers.

75 In contrast, Dr Lee's report referred only to the appellant's assertion that her anger had overwhelmed her, without any consideration of the facts that the appellant had admitted to in the SOF. He did not appear to have considered the circumstances of the appellant's offending beyond reiterating that he found it relevant that the appellant had been a "petite lady standing up to three police officers at 6.00am". He apparently used this to infer that the appellant had acted impulsively and with diminished concern for the consequences. There is little indication of why this was the appropriate inference to make. In any event, this was distinguishable from the proposition that the appellant was not able to appreciate or understand the nature of her actions, and was simply an assertion that she was *unconcerned* with the consequences thereof. When asked to explain, Dr Lee simply said it was an "opinion" and a "[judgment] call". He later acknowledged that he had no basis or evidence to support his suggestion that the appellant acted with diminished appreciation of the consequences of her conduct. His opinion appeared to rest solely on the fact that the appellant had PDD, despite it being unclear how the appellant's PDD was linked to any "diminished concern". There had also been some vague suggestion from Dr Lee that the appellant's ability to assess the situation and to determine whether it was a "right situation" had been impaired at the material time: see [22] above. It was not clear what this meant, or how the appellant's PDD would have resulted in this alleged impairment. This too appeared to be based solely on the fact that she was a petite lady facing three policemen in the early morning. In

this regard, the respondent rightly observed that Dr Lee's clinical notes suggested that he had not recorded or seriously considered the appellant's account of the offences.

76 Taken together with my finding that PDD does not generally result in impulsivity or aggression, I concluded that that Dr Yeo's careful and granular analysis of the material events was more persuasive. He provided cogent reasons for his conclusion that the appellant's PDD did not affect either her self-control or her ability to appreciate the nature of her actions and their consequences. I therefore found that there was *no* contributory link between the appellant's PDD and the offences.

The appropriate sentence

77 Although the appellant's written submissions suggested that "other community based sentencing options" could be considered, this point was not explored in any detail on appeal. In any case, one of the three charges she had pleaded guilty to was a charge under s 332 of the Penal Code, which is punishable with up to seven years' imprisonment. As such, she was not eligible for a community sentence in view of ss 337(1)(*i*) and 337(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), which specifically precludes community sentences where any of the offences in question is punishable with an imprisonment term which exceeds three years.

78 I turn now to examine whether a probation pre-sentencing report should have been called for, as the appellant contended, and whether the sentence imposed was manifestly excessive. Specifically, the appellant asserted that the District Judge erred in:

(a) failing to "adequately consider" that the principle of rehabilitation generally assumes centre stage when the offender is below 21 years of age;

(b) placing undue weight on the seriousness of the offence such that deterrence was held to take precedence over rehabilitation; and

(c) failing to appreciate the mitigating factors that were placed before the court.

The applicable principles

79 The appellant was 20 years of age at the time of the offences and at conviction. As such, the District Judge referred primarily to the two-step framework set out in *Al-Ansari* in sentencing the appellant to a term of imprisonment (GD at [35]). The court in *Al-Ansari* held at [77] and [78] that:

> 77 … First, the court must ask itself whether rehabilitation can remain a predominant consideration. If the offence was particularly heinous or the offender has a long history of offending, then reform and rehabilitation may not even be possible or relevant, notwithstanding the youth of the offender. In this case, the statutorily prescribed punishment (in most cases a term of imprisonment) will be appropriate.
>
> 78 However, if the principle of rehabilitation is considered to be relevant as a dominant consideration, the next question is how to give effect to this. In this respect, with young offenders, the courts may generally choose between probation and reformative training. The courts have to realise that each represents a different fulcrum in the balance between rehabilitation and deterrence. …

80 Hence, the starting presumption is that rehabilitation is the dominant sentencing objective for young offenders: see *Jordon Lim* at [30]; *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 ("*A Karthik*") at [33] and [43]. This has been held to be a reflection of (a) the generally lower culpability of young

offenders due to their immaturity; (b) their enhanced prospects of rehabilitation; (c) society's interest in rehabilitating them since they have many potentially productive years ahead of them; (d) the recognition that young offenders suffer disproportionately when incarcerated, and (e) the likelihood of the prison environment having a corrupting influence on them (*ASR* at [95] and *A Karthik* at [37] to [42]).

81 Applying the two step *Al-Ansari* framework, the court must first ask itself whether rehabilitation can remain a predominant consideration (*Al-Ansari* at [77]). The primary question at this stage is whether it would be in society's best interests that rehabilitation remain the controlling sentencing objective (*ASR* at [99]). Where the case does not involve a foreign offender who is not locally resident, rehabilitation might be displaced as the predominant sentencing consideration if (a) the offence is serious, (b) the harm caused is severe, or (c) the offender is hardened and recalcitrant: see *ASR* at [97] to [102], citing *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 at [30]. This reflects to an extent the High Court's comments in *Al-Ansari*, which referred to cases where "the offence is particularly heinous or the offender has a long history of offending" (at [77]).

82 If the principle of rehabilitation remains a dominant consideration, the next step in the *Al-Ansari* framework is to consider how to give effect to it (at [78]). The sentencing options that give dominant consideration to the principle of rehabilitation are probation orders and reformative training: *Al-Ansari* at [66]. While imprisonment may likewise achieve rehabilitative objectives, it does not place the principle of rehabilitation as a dominant sentencing consideration: *ASR* at [136], citing *Al-Ansari* at [65].

83 Additionally, in coming to my decision, I was conscious of Sundaresh Menon CJ's observations in *A Karthik*. It was held that where a court deals with the sentencing of an offender who is aged 21 or below, it should generally call for a probation pre-sentencing report before imposing the sentence, and should not embark on an assessment of the offender's suitability for probation without the benefit of such a report. This excludes situations where the basic prerequisites for probation to be considered are not met, or the court is satisfied that probation is not a realistic option on the facts of the case: *A Karthik* at [20] and [21], citing *Wong Shan Shan v Public Prosecutor* [2008] SGHC 49 at [19] to [21].

Application to the present case

84 I did not see any reason to interfere with the District Judge's decision in the present case. In my opinion, he did not err in his assessment that specific and general deterrence were the dominant sentencing considerations. This being the case, I was satisfied that probation was not a realistic option, and accordingly did not call for a probation suitability report. I explain my reasons by applying the *Al-Ansari* framework, which addresses the concerns highlighted by the appellant (see [78], above).

85 The District Judge expressly acknowledged at [35] of the GD that the age of the appellant suggested that the predominant sentencing consideration would be that of rehabilitation. I agreed that he was correct in doing so. This followed from the well-established principle that the presumptive position is that rehabilitation is the primary sentencing consideration where the offender is 21 years of age or younger. The pertinent question was whether this had been displaced by the need for deterrence, taking into account the factors identified at [81] above. Having considered the manner in which the various offences had

been committed, the appellant's relevant antecedent and the fact that she had turned 20 by the time of the offences, I concluded that it had.

86 The s 332 Penal Code offence in particular was a serious one that carried an imprisonment term of up to seven years and caning. The severity of the offence is also indicated by the fact that it generally attracts a custodial sentence: see [67] of *Jeffrey Yeo*. The manner in which it was committed was such that the appellant's culpability could not be described as low.

87 I noted that the s 332 Penal Code offence took place in the context of a more protracted assault on the police officers present: see *Jeffrey Yeo* at [60(f)]. The appellant continued shouting and gesturing wildly despite having been told by Sgt Din to calm down. Having been told that he was placing her under arrest, she became violent and physically assaulted three police officers. Even after being placed in the police vehicle, she hurled abuse that was targeted at Sgt Tan's role as a police officer. This resulted in two other s 332 Penal Code charges which were taken into consideration for the purposes of sentencing, as well as a s 20 MOA and s 6(3) POHA charge. Further, these offences, including the proceeded s 332 Penal Code charge, took place in the public's view and hearing (*Jeffrey Yeo* at [60(e)]): the SOF stated that Sgt Tang and his partner were at Saint James Power Station performing patrol duties because of the crowds of people exiting the night clubs there.

88 I balanced these factors against the fact that the offences were not premeditated, and the actual harm caused by the offences was relatively minor. None of the victims suffered serious injuries, with the most severe being a 2cm by 2cm hematoma. While the respondent submitted that the potential and psychological harm that arises from an assault by biting should not be discounted, there was in fact no specific evidence of any psychological harm

caused. As the appellant observed, all of the offences took place within approximately ten minutes. The assault on the officers collectively, much less on any individual officer, cannot be said to have been particularly sustained or traumatic. The respondent adduced no direct evidence to suggest otherwise, and I did not see sufficient grounds to draw an inference that psychological harm had been caused. As such, any psychological harm was purely speculative, and I placed no weight on this suggestion.

89 However, I agreed that the fact the appellant had bitten Sgt Tang was a relevant factor that was indicative of greater *potential* harm compared to cases where the offender uses his bare hands. As the respondent rightly noted, the act of biting may cause more than superficial injury and carries with it risks of transmission of bacteria and infectious diseases (see GD at [38]). Biting was referred to at [60(b)] of *Jeffrey Yeo* as a dangerous means of causing hurt, and the precedents cited by the respondent indicate that a stiffer sentencing range of between five and ten months' imprisonment is ordinarily imposed. This is in contrast to the general sentencing trend identified in *Jeffrey Yeo* at [59] of two to nine months' imprisonment.

90 It was also significant that the appellant was not a first-time offender. She had been convicted for disorderly behaviour approximately two months prior to the commission of the present set of offences. This was relevant especially since the antecedent similarly demonstrated her disregard for the authority of police officers. As summarised at [47] and [48] of the GD, her previous s 20 MOA conviction involved her disobeying a police officer's instructions not to enter a cordoned-off area and shouting vulgarities despite warnings for her to calm down. There was no evidence before me that suggested that her PDD had contributed in any way to that offence. The fact that the appellant had gone on to reoffend so quickly after her previous conviction, and

by committing even more serious offences, illustrated the need for specific deterrence in the present case.

91 Balancing the factors identified above, I concluded that the appellant's culpability was in the middle of the Category 1 range in the *Jeffrey Yeo* framework. While the presumptive sentencing consideration was rehabilitation, having regard to the underlying reasons for this presumption, identified above at [80], I was of the opinion that this presumption was displaced on the facts. The appellant was already 20 at the time of the offences and when she was sentenced, and therefore was not a particularly young offender. This was relevant in assessing the extent to which her culpability had been reduced by immaturity, the extent to which the prison environment would be disproportionately difficult, and the extent to which she could be said to be particularly impressionable by virtue of her age. In my opinion, the prospective and retrospective rationales for placing emphasis on rehabilitation apply with less force where the offender is on the cusp of being sentenced as an adult offender over 21. It is in this context that the respondent's observations that the appellant had been running an online business and essentially functioning as an adult were relevant.

92 As such, I held that the need for general and specific deterrence in this case displaced the presumptive emphasis on rehabilitation. It followed from this that probation would not have been appropriate. To be clear, this decision should not be interpreted as suggesting that the severity of the offences involved is such that the importance of rehabilitation should be displaced in every case involving young offenders, or even offenders aged 20. Rather, a careful analysis of the facts of every case, including the particular circumstances of the offender and the offence should be undertaken: see *A Karthik* at [43].

93 In my view, the sentences imposed by the District Judge were not manifestly excessive. The District Judge observed at [39] of the GD that the precedents tendered by the respondent involved sentences ranging from five to ten months' imprisonment. This was in line with the sentencing range identified in other cases. For example, in *Public Prosecutor v He Yan* [2019] SGDC 88, the court referred to 21 post-*Jeffrey Yeo* precedents involving the biting of a police officer and observed that the majority of cases involved sentences of between five to six months' imprisonment (at [11]). In *Public Prosecutor v Koh Sock Buay* [2018] SGDC 38 at [35], the court was similarly of the view that sentences of around five to six months' imprisonment would generally be imposed in cases involving the biting of police officers.

94 Having regard to these precedents and to the framework at [59] of *Jeffrey Yeo*, the sentence imposed by the District Judge was not manifestly excessive. It is pertinent to bear in mind the fact that the appellant had a recent and relevant antecedent, as well as the fact that two s 332 Penal Code charges were taken into consideration.

95 The short custodial terms imposed in respect of the s 20 MOA and s 6(3) POHA charges also cannot be said to be manifestly excessive. The abusive language used by the appellant was especially egregious as it was targeted at Sgt Tan *qua* police officer. The District Judge chose to run the shorter of these two sentences consecutively with the sentence for the s 332 Penal Code charge. I saw no reason why the 21-week aggregate sentence would be manifestly excessive.

Conclusion

96 For the reasons above, I was not persuaded either that the appellant's PDD had caused or contributed to her commission of the offences, or that the appellant's sentences were manifestly excessive. Accordingly, I dismissed the appeal and affirmed the District Judge's decision.

See Kee Oon
Judge

Lim Kia Tong (Hin Tat Augustine & Partners) for the appellant in MA 9166/2017 and the applicant in CM 22/2018;
Hri Kumar Nair SC, Tan Wen Hsien, Li Yihong and Goh Yi Ling (Attorney-General's Chambers) for the respondent in MA 9166/2017 and CM 22/2018.