Public Prosecutor *v* Koh Wen Jie Boaz
[2015] SGHC 277

Case Number	: Magistrate's Appeal No 9094 of 2015
Decision Date	: 26 October 2015
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Francis Ng Yong Kiat, Tang Shangjun and Teo Lujia (Attorney-General's Chambers) for the appellant; Randhawa Ravinderpal Singh s/o Savinder Singh Randhawa and Ow Yong Wei En, James (Ouyang Wei'en) (Kalco Law LLC) for the respondent; Lim Junwei, Joel (Allen & Gledhill LLP) as young amicus curiae
Parties	: PUBLIC PROSECUTOR — KOH WEN JIE BOAZ

Criminal procedure and sentencing – Sentencing – Young offenders

26 October 2015

Sundaresh Menon CJ:

Introduction

1 This was an appeal brought by the Prosecution against a sentence of 30 months' split probation imposed by a district judge on the respondent, Boaz Koh Wen Jie, a youthful offender. The sentence was imposed for offences that the respondent committed while he was already under probation on account of other offences he had previously committed. The Prosecution contended that a second sentence of probation was inappropriate and that the district judge should have ordered reformative training instead.

2 Two issues were central to the appeal. The first was whether a second sentence of probation was appropriate given that the respondent had reoffended while on probation. The second was the weight to be placed on the respondent's apparent reform after the subject offences. It was urged upon me by counsel for the respondent, Mr James Ow Yong and Mr Ravinderpal Singh, that a second sentence of probation was warranted despite the respondent's antecedents because of the promising signs of reform the offender had displayed subsequent to the commission of the subject offences and prior to sentencing by the district judge. The respondent had, amongst other things, checked himself into a residential programme at a Christian halfway house, and was reported to be making good progress. The present case also presented the opportunity for me to re-examine the sentencing approach that is appropriate for youthful offenders.

3 I heard the appeal on 16 July 2015 and reserved judgment to consider the matter further. On 29 July 2015, I allowed the Prosecution's appeal and substituted the district judge's order of probation with a sentence of reformative training. I gave a brief oral judgment at that time and as I indicated I would, I now give my detailed reasons.

The facts

The offences and the circumstances in which they were committed

4 The factual narrative in this case should begin with the first set of offences which led to the respondent being put on probation in the first place. He committed, and pleaded guilty to, two offences of theft in dwelling under s 380 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), with two other charges of theft in dwelling and a further charge of criminal trespass under s 441 of the Penal Code taken into consideration for sentencing. He was sentenced on 3 October 2013 to undergo 18 months' probation, and was required to perform 150 hours of community service for these offences.

5 While the respondent was under probation, he committed further offences, which are the subject of consideration in this appeal. The Prosecution proceeded on five charges against the respondent: one charge of vandalism; one of theft; and three of criminal trespass. Six other charges were taken into consideration for the purpose of sentencing. These included one other charge of vandalism, four of criminal trespass and one of mischief. For ease of reference, I set out the charges, which are arranged chronologically by the date of the offence, in the following table:

S/No	Charge	Date and time of the offence	Prescribed punishment	Proceeded / Taken into Consideration ("TIC")
1	MAC-903222-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	Sometime between April and June 2013 at or about 8 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	TIC
2	MAC-902253-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	Sometime between October and December 2013 at or about 10.30 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	Proceeded
3	MAC-902251-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	Sometime in February 2014 at or about 2 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	TIC
4	MAC-902252-2014 Mischief under s 426 read with s 34 of the Penal Code	Sometime in February 2014 at or about 2.15 pm	Imprisonment for a term which may extend to one year, or with fine, or with both	TIC
5	DAC-906990-2014 Vandalism under s 3 of the Vandalism Act (Cap 341, 1985 Rev Ed) ("the Vandalism Act")	28 March 2014 between 3 pm and 4 pm	Fine not exceeding $2,000 or imprisonment for a term not exceeding 3 years, and caning with not less than 3 strokes and not more than 8 strokes	TIC

6	MAC-902250-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	29 March 2014 at about 7.45 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	Proceeded
7	MAC-902248-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	Sometime between end April and the early May 2014 at or about 10 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	TIC
8	MAC-902249-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	Sometime between end April and early May 2014 at or about 10 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	TIC
9	MAC-902246-2014 Theft with common intention under s 379 read with s 34 of the Penal Code	6 May 2014 at or about 11.45 pm	Imprisonment for a term which may extend to 3 years, or with fine, or with both	Proceeded
10	MAC-902247-2014 Criminal trespass with common intention under s 447 read with s 34 of the Penal Code	6 May 2014 at or about 11.55 pm	Imprisonment for a term which may extend to 3 months, or with a fine which may extend to $1,500, or with both	Proceeded
11	DAC-906681-2014 Vandalism with common intention under s 3 of the Vandalism Act read with s 34 of the Penal Code	7 May 2014 at or about 12.30 am	Fine not exceeding $2,000 or imprisonment for a term not exceeding 3 years, and caning with not less than 3 strokes and not more than 8 strokes	Proceeded

6 The charge of vandalism (S/No 11 of the table) was the most serious of the charges that the Prosecution proceeded on. The vandalism in question consisted of vulgar words prominently spray-painted on the walls at the rooftop of a block of HDB flats, and occurred on 7 May 2014. The respondent had been spending time with a group of his secondary school friends, Reagan Tan Chang Zhi ("Reagan"), Chay Nam Shen ("Chay"), Goh Rong Liang ("Goh") and David William Graaskov ("Graaskov") in the vicinity of HDB Block 85A Lorong 4 Toa Payoh ("Block 85A"). The group decided to steal some spray paint cans which they chanced upon in the rear of an open-top lorry parked in the vicinity. This is the subject of the theft charge (S/No 9 of the table). The group then decided to commit the acts of vandalism by spraying paint on the walls at the rooftop of Block 85A. As it was almost midnight, Graaskov chose to leave at this stage to catch the last bus home. The remaining four, led by the respondent, gained access to the rooftop of Block 85A. This was a restricted area

and they had to climb through a gap in the parapet at the 23rd storey. This is the subject of the criminal trespass charge (S/No 10 of the table). Once they were on the rooftop, the respondent scanned the opposite facing block of the flats and noticed some lights were still switched on. He and his companions waited about 10 minutes or so until they were turned off. They then embarked on the next stage of their plan.

7 The respondent stepped out onto the ledge and sprayed an expletive directed against a local political party on an outward-facing wall. Once he had done this, he walked back onto the rooftop and asked the others if they were planning to join in. The respondent then stepped onto the same ledge and sprayed over the same expletive as he felt that it was not "dark enough". The respondent also sprayed the words "WAKE UP" and an image depicting a crossed-out circle with the initials of the same political party in the centre on the same outward facing wall. The others followed the respondent's lead and they proceeded to vandalise both the inward and outward-facing walls on the rooftop with various other expletives and symbols. The group left Block 85A once they were done, and the respondent threw the spray cans down a rubbish chute.

8 The remaining two charges that the Prosecution proceeded with were for criminal trespass (S/Nos 2 and 6 of the table) that arose from two unrelated incidents. The first trespass occurred between October and December 2013, when the respondent, Reagan, Chay and Graaskov climbed over a gate into a worksite at Jalan Rajah. While in the worksite, they climbed onto a crane and stayed there for about two hours before leaving. The second occurred on the evening of 29 March 2014 when the respondent, Reagan, Chay, Goh and Graaskov entered a condominium at Marina Bay. There was a small gap in the entrance to the condominium, which Reagan, who was of slight build, was able to slip through. Reagan then unlocked the gate to the entrance and let the rest of the group in. They gained access to the condominium rooftop where they smoked and chatted for about an hour, before leaving.

9 The respondent was arrested on 9 May 2014. He was released on bail on 16 May 2014.

The respondent's attempts at reform

10 The respondent had an apparent change of heart subsequent to his arrest and release. He first took up employment at his father's company, Asialink W Pte Ltd, for six months between June and December 2014, working an average of three or four days a week. The respondent's supervisor, Mr Anisur Rahman Samsul, a site safety supervisor with the company, wrote a character reference letter in which he said that the respondent had proved himself to be diligent and responsible, and that he had built up a good rapport with his co-workers.

11 The respondent also began weekly volunteer work at The Silver Lining Community Services ("Silver Lining") and Care Corner (Tampines) ("Care Corner") between June and December 2014. The respondent produced a letter written by the Head of Department for Youth at Silver Lining, Mr Jeffrey Mak, which stated that the respondent had benefitted from his participation in the programme and was beginning to show improvements in his behaviour and attitude. The respondent also produced a letter written by a social worker at Care Corner which stated that the respondent's attendance had been regular and that he was generally participative, compliant and manageable, although there were some minor bouts of mischief during group activities.

12 On 20 January 2015, which was just eight days before the respondent's matter was due for mention in court and at which it had been indicated that the respondent intended to plead guilty, he enrolled himself into a residential programme at The Hiding Place. The Hiding Place bills itself as a home set up for the "Spiritual Rehabilitation of ex-drug addicts, ex-prisoners, troubled youths and

people with related problems". It provides one-year residential programmes, amongst other services. Residents are not allowed to leave the home without supervision and are accompanied by staff members for all appointments outside the premises. The respondent's enrolment at The Hiding Place came after his parents and sister approached Pastor Phillip Chan, who runs the home, for help in late 2014. The respondent produced a letter from Pastor Chan which stated that the respondent related well to staff and residents, and that he had been obedient and diligent in completing the tasks that were assigned to him.

The proceedings in the court below

The plea-of-guilt mention on 28 January 2015

13 Shortly after the respondent checked himself into The Hiding Place, he had to appear in court on 28 January 2015, where he pleaded guilty to the five charges that were proceeded with and consented to the remaining charges being taken into consideration for the purpose of sentencing (see [5] above). At this mention, the district judge was informed that the respondent had committed himself to voluntary community service and had admitted himself to the residential programme at The Hiding Place. The district judge then deferred sentencing for three weeks to enable reports to be prepared which would assess the respondent's suitability for reformative training and probation. The respondent was remanded at Changi Prison during these three weeks.

The deferred sentencing mention on 18 February 2015

14 The reformative training and probation suitability reports were placed before the district judge at the deferred sentencing mention on 18 February 2015. The reformative training suitability report was prepared based on interviews with the respondent on 3 and 6 February 2015. The medical memorandum indicated that he was fit and suitable for reformative training, and the report identified risk factors that were present in multiple domains:

(a) a history of offending – the respondent had committed several offences while he was already under probation for earlier offences;

(b) family – the respondent did not feel cared for by his family and it was assessed that parental supervision and discipline were inadequate;

(c) education/employment – the respondent dropped out of the Institute of Technical Education, had no interest in studying and had little engagement in gainful employment;

(d) companions – the respondent had close relationships with pro-criminal companions;

(e) leisure/recreation – the respondent spent most of his free time with his friends playing computer games with the same group of pro-criminal companions; and

(f) attitude/orientation – the respondent had criminal and thrill-seeking tendencies.

15 On the other hand, the probation suitability report dated 18 February 2015 was markedly more positive. It indicated that probation was appropriate for the respondent. The report observed that after the respondent's release from remand on 16 May 2014, the respondent had complied with all probation conditions (imposed by the first probation sentence) and had been regular in his weekly reporting sessions. The report also stated that the respondent had expressed regret for his offences and hoped to be given an opportunity to continue at The Hiding Place so that he could complete his

GCE 'O' level examinations, which he had already registered for as a private candidate while residing there.

16 The district judge thus had the benefit of both the reformative training and probation suitability reports before him at the sentencing mention on 18 February 2015. He nonetheless took the unusual course of deciding to defer sentencing for a further period of three months to assess the respondent's progress at The Hiding Place. He directed that a supplementary probation report be prepared and placed before him at the further sentencing mention three months later. Had the respondent been sentenced at this sentencing mention on 18 February 2015, there could have been little doubt that he would have been sentenced to reformative training. I will return to this point further below.

The breach action on 18 February 2015

17 On the same day on which the deferred sentencing mention was heard, the respondent was brought before another district judge for action to be taken in respect of his breach of the *first* probation order. It is important to bear in mind that at this point, no sentence had been passed on the second set of offences which are those that were before me. The district judge who heard the breach action extended the probation period of the first probation order for six months with effect from 3 April 2015, which was the day after the first probation term was to end. He also, amongst other things, imposed an additional condition that the respondent resides at The Hiding Place until the end of the extended probation order.

The further sentencing mentions on 3 and 8 June 2015

18 The respondent returned on 3 June 2015 for a further sentencing mention before the district judge who had deferred sentencing in this case. The supplementary probation report, which was placed before the district judge at this mention, was favourable. The report stated that the respondent was attending tuition at The Hiding Place in preparation for his GCE 'O' level examinations. It also cited positive feedback from the staff at the home, who said that the respondent had responded well to the residential programme and that they had no disciplinary issues with him. The probation officer who prepared the supplementary report recommended 30 months of split probation with various conditions, including that the respondent reside voluntarily at The Hiding Place for 21 months.

19 The district judge adjourned the matter and delivered his judgment on sentence five days later on 8 June 2015. He sentenced the respondent to 30 months of split probation (25 months intensive and 5 months supervised) and imposed the following conditions:

(a) The respondent was to remain indoors from 10pm to 6am unless otherwise varied by the Probation Services Branch.

(b) The respondent was to perform 240 hours of community service.

(c) The respondent was to undergo residential supervision at The Hiding Place for 21 months.

(d) The respondent was to be on the Electronic Monitoring Scheme for four months following his discharge from The Hiding Place, or until his National Service enlistment, whichever was earlier.

(e) The respondent was to undergo a progress review before the Progress Accountability Court on 5 October 2015.

(f) The respondent's parents were to execute a bond in the sum of $10,000 to ensure the respondent's good behaviour.

20 The district judge also granted a stay of the execution of his order pending the Prosecution's appeal.

The district judge's decision

21 In the district judge's reasons (see *Public Prosecutor v Boaz Koh Wen Jie* [2015] SGDC 159), he recognised that there were "clear aggravating factors" in this case. The respondent had not only reoffended while on probation, he was also the chief instigator among his group of friends. Despite this, the district judge thought that the respondent had shown "signs of a strong and significant turnaround" that made the present case an exceptional one.

22 The district judge recognised the need for deterrence, but he thought that probation could provide a measure of deterrence if the conditions were made "highly rigorous and exacting to fulfil this need". The district judge thought that a "stringent and exacting probation order best balances all the considerations". The principal factors that influenced the district judge against the grant of a sentence of reformative training were (a) the respondent's reform; and (b) the fact that reformative training could not "be adjusted to fit the characteristics of the offender at all". He concluded by observing that the long probation term he was imposing, which also included strict conditions would result in the respondent's freedom being "severely curbed" and was "exacting and rigorous enough to serve its purposes in this case".

Arguments on appeal

23 On appeal, Mr Francis Ng for the Prosecution contended that the respondent should be sentenced to reformative training instead of probation because the respondent had committed multiple offences while on probation, the vandalism of the HDB rooftop walls was serious, and he played a key role in the commission of the offence. The respondent had kept a lookout, sprayed and then re-sprayed his graffiti in order to make it more obvious, and instigated and led the others in his group to commit other offences. Mr Ng contended that the respondent's voluntary self-admission into the residential programme at The Hiding Place had to be seen in the light of the fact that he did so just eight days before his scheduled plea-of-guilt mention. Furthermore, a sentence of probation that was conditional on the respondent's residence at The Hiding Place would be tantamount to allowing the respondent to choose his sentence, and would undermine the legislative regime put in place for reformative training.

24 Mr Ow Yong and Mr Singh, counsel for the respondent, argued that this was an exceptional case where the district judge had rightly sentenced the respondent to probation having taken into account the respondent's genuine and self-directed steps at reforming himself by enrolling into the residential programme at The Hiding Place. The respondent had also experienced a positive turnaround since his time at The Hiding Place. Thus, probation was the most appropriate sentence, because the respondent should be allowed to continue with what appeared to be the nascent stages of his successful rehabilitation.

25 Mr Joel Lim appeared as *amicus curiae* and made submissions on the principles applicable to the sentencing of a youthful offender who had reoffended while on probation. The thrust of his argument was that the fact that a youthful offender had reoffended while on probation did not *ipso facto* preclude a second sentence of probation. His submissions discussed cases on the sentencing approach to be taken in such situations, which I found helpful. I will return to his arguments and some

of the cases he discussed a little later.

My decision

26 The threshold for appellate review in an appeal against a sentence is trite (see *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [14]). The appellate court must be satisfied that the sentencing judge had:

(a) made the wrong decision as to the proper factual matrix for the sentence;

(b) erred in appreciating the material before him;

(c) erred in principle in pronouncing the sentence that he did; or

(d) imposed a manifestly excessive or manifestly inadequate sentence.

27 The Prosecution contends that the district judge erred in principle in the sentence that he meted out. This appeal drew out a tension between two factors that seemed to tug in opposite directions: the respondent's initial recalcitrance on one hand, and his subsequent reform on the other. The question before me was whether a second probation order was an appropriate sentence in the particular context of this respondent, a youth, but also a repeat offender. This necessitated a consideration of two issues. The first was the principles for sentencing youthful offenders who had reoffended while on probation, and how those principles applied to the case before me. The second was whether the respondent's apparent change of heart was an adequate justification for imposing a second probation order even though a sentence of reformative training seemed otherwise to be appropriate. I deal with each of them in turn.

General principles for sentencing youthful offenders

28 It is well established that when a court sentences a youthful offender, it approaches the task in two distinct but related stages (*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*PP v Al-Ansari*") at [77]–[78]). At the first stage of the sentencing process, the task for the court is to identify and prioritise the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances including those of the offence. This will then set the parameters for the second stage of the inquiry, which is to select the appropriate sentence that would best meet those sentencing considerations and the priority that the sentencing judge has placed upon the relevant ones.

Identification of the sentencing considerations

29 In respect of the first stage, the primary sentencing consideration for youthful offenders will generally be rehabilitation. Yong Pung How CJ in *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 explained this in the following terms (at [21]):

> Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young 'don't know any better' and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more

easily led and less controlled in their behaviour. …

30 But rehabilitation is neither singular nor unyielding. The focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant. Broadly speaking, this happens in cases where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.

31 One example of a case where rehabilitation yielded its usual primacy in the sentencing of a youthful offender is *Public Prosecutor v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR(R) 281 ("*PP v Mohamed Noh Hafiz*"). The offender there was a 17-year-old male who had on separate occasions followed pre-pubescent girls into the lifts of public housing estates as they were returning home alone. When the girls emerged from the lifts, he approached them from behind, covered their mouths and dragged them to a staircase landing. He then attacked and molested them violently. The offender faced four charges of aggravated outrage of modesty, two of rape, three of unnatural sex offences and a robbery charge which arose from an incident where the offender forcibly took a mobile phone from a girl's pocket after he accosted her. The offender pleaded guilty to the ten charges. In mitigation, counsel for the offender asked for a sentence of reformative training to be imposed. The counsel emphasised that the offender was young and willing to change, and that he had a difficult childhood and had suffered emotional scars.

32 Tay Yong Kwang J sentenced the accused to 20 years' imprisonment and 24 strokes of the cane. Tay J held that reformative training was inappropriate in the light of the number and seriousness of the offences. The accused had been shockingly audacious in committing most of the attacks in the day, near the homes of his victims. Eleven young girls had been subject to intense emotional trauma and indelible hurt by his despicable acts. *PP v Mohamed Noh Hafiz* was a clear example of a case where the offences were sufficiently serious and the actions of the offender were sufficiently outrageous that rehabilitation had to yield to other sentencing considerations.

33 Another example is my unreported *ex tempore* decision in *Long Yan v Public Prosecutor*, Magistrate's Appeal No 9015 of 2015 (16 July 2015), which I heard on the same day as the present appeal. The youthful offender in that case pleaded guilty to one charge of voluntarily causing hurt by dangerous means and two charges of criminal intimidation under ss 324 and 506 of the Penal Code respectively. The charges concerned acts of violence and bullying perpetrated on another young person over the period of one month. The hurt charge arose from an occasion when the offender abused the victim and poured hot water from a kettle on the victim's shoulders and back. The offender had, in the District Court, been sentenced to an aggregate imprisonment term of 3 months and one week. On appeal, the offender argued that this should be set aside in favour of a rehabilitative option such as probation or reformative training or, failing that, a fine. It should be noted that the offender was a foreign national and she had no family in Singapore. It was evident that probation and reformative training were not viable in those circumstances because of the absence of a suitable protective environment. I dismissed the appeal noting first that it was questionable, given the gravity of the offences and the harm caused, whether in principle, rehabilitation remained the predominant sentencing consideration, but in any event, it was evident these were not viable sentencing options given the absence of a suitable protective environment. There was also no doubt in my mind that a fine would be grossly inadequate.

34 I cite these as examples to illustrate the point that at the first stage of the sentencing inquiry for youthful offenders, the court is concerned with a threshold question which is whether rehabilitation retains its primacy in the sentencing matrix. As I have noted above, it may be found *not* to be so on account of one or more of such factors as the harm caused, the gravity of the offence,

the background of the offender and the conditions essential to render rehabilitative options viable. But if rehabilitation remains the primary consideration, then the court can consider one from among the wide range of sentencing options it has at its disposal. These include options such as community-based rehabilitation, probation, placement in a juvenile rehabilitation centre, reformative training, fines, caning and imprisonment. Each of these sentencing options, or a combination of them, vindicates one or more of the classical principles of sentencing (*ie*, retribution, deterrence, prevention and rehabilitation as stated by Lawton LJ in his seminal decision in *R v James Henry Sargeant* (1974) 60 Cr App R 74 at 77) to varying degrees and extents within an overarching emphasis on the rehabilitation of the youthful offender.

Selection of the appropriate sentence

35 For the purposes of the present appeal, I need only discuss the sentencing principles that are implicated when choosing between sentences of probation and reformative training. Probation places rehabilitation at the front and centre of the court's deliberation (*PP v Al-Ansari* at [41]–[43]). It is a sentence which has as its primary object the swift reintegration of the offender back to society, and provides support to assist him in avoiding the commission of further offences (Eric Stockdale and Keith Devlin, *Sentencing* (Waterlow Publishers, 1987) at p 208). As J K Canagarayar in "Probation in Singapore" (1988) 30 Mal L Rev 104 at p 131 puts it, a sentence of probation is ultimately "a process of re-orienting the offender to the art of living".

36 While it is clear that probation is conducive to rehabilitation, I emphasise that it is not the only sentencing option for a youthful offender where rehabilitation remains the dominant sentencing consideration. Reformative training too is geared towards the rehabilitation of the offender (*PP v Al-Ansari* at [47]). The rehabilitative goal of reformative training is apparent from the Parliamentary debates relating to the introduction of reformative training. In 1956, the then Chief Secretary, Mr W A C Goode, at the second reading of the Criminal Procedure Code (Amendment) Bill said (*Singapore Parliamentary Debates, Official Report* (5 December 1956) vol 2 at cols 1068–1069):

> Sir, this is the first of three Bills standing in my name in the Order Paper all of which are measures to enact the legislation required to establish in Singapore the system of reformative training for young offenders between the ages of 16 and 21, which is commonly known as the Borstal System. We already have provision for children and young persons, that is to say, the age group 7 to 16. They are provided for under the Children and Young Persons Ordinance by means of remand homes, approved schools, approved homes and other special places of detention; and provision has also been made for the reformative treatment of those who are over 21 years of age. The High Court can sentence them to corrective training with a view to their reformation and the prevention of crime, but as yet we have no properly established system for dealing with the age group 16 to 21. As a temporary expedient, we have segregated them from the older and hardened criminals in the prison by setting aside a Young Offenders Section to which those young people over 15 are now sent. But this has only achieved segregation and has not provided adequately for any reformative training, nor have the courts at present power to sentence people to reformative training. It is high time that we did make proper provision for the enlightened treatment of this age group 16 to 21. *This is an age at which the majority are likely to respond to expert efforts to reclaim them from crime and to prevent them from becoming criminals*. [emphasis added]

37 Similarly, the then Minister of State for Law and Home Affairs, Prof S Jayakumar said as follows at the second reading of the Criminal Procedure Code (Amendment) Bill (Bill 2 of 1983) in 1983 (*Singapore Parliamentary Debates, Official Report* (24 March 1983) vol 42 at col 1637):

> *Sir, male offenders between 16 and 21 years of age are at present sentenced upon conviction to detention in the Reformative Training Centre, for treatment and rehabilitation*. Such offenders are detained in the Centre for a period of about 18 to 36 months. Subject to good behaviour during their period of reformative training and upon approval by the Board of Visiting Justices, the trainees are released conditionally and placed under the supervision of an Aftercare Officer from the Ministry of Social Affairs, until the expiration of four years from the date of the sentence. [emphasis added]

38 Having said that, there is no gainsaying the fact that reformative training also incorporates a significant element of deterrence because there is a minimum incarceration period of 18 months that is not a feature of probation (see Reg 3 of the Criminal Procedure Code (Reformative Training) Regulations 2010 (S 802/2010); *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 ("*PP v Adith*") at [21]; *PP v Al-Ansari* at [57]–[58]). Prof Tan Yock Lin thus observes in *Criminal Procedure* (LexisNexis, Looseleaf Ed, Issue 11, July 2004), vol 3, at para 2554 that reformative training offers the court a middle ground between sending the offender to prison and the desire to rehabilitate a young offender. In other words, reformative training allows the courts to sentence the offender to a rehabilitative programme under a structured environment while avoiding the danger of exposing the young offender to the potentially unsettling influence of an adult prison environment. It presupposes that the offender in question is amenable to rehabilitation within a closed and structured environment such as the Reformative Training Centre.

39 As I have noted above (at [34]), at the first stage of the inquiry, the court is concerned with whether there is a need to incorporate a sufficient element of deterrence within the overarching focus on the goal of rehabilitation. Because reformative training incorporates the elements I have noted in the previous paragraph, it will be the preferred sentencing option in cases where a degree of deterrence is desired.

40 This can be illustrated by *PP v Al-Ansari*. The respondent, who was 16 years old, together with two accomplices were driving in a car and picked up a foreign sex worker (the victim) who agreed to provide sexual services to one of the accomplices. The respondent's accomplices raped, robbed and assaulted the victim in the car. The respondent participated in the criminal enterprise by maintaining the car engine, pushing the victim out of the car, throwing one of her shoes out of the car to avoid detection and assisting to count the stolen money. The respondent pleaded guilty to one charge of robbery, with another charge of intentionally using criminal force on the victim taken into consideration for the purposes of sentencing. V K Rajah JA held that even though the respondent had no antecedents and was young, there was a need to incorporate an element of deterrence within the interest of securing his rehabilitation because of the seriousness of the offence and the degree of premeditation with which it was carried out. Rajah JA thus allowed the Prosecution's appeal against the district judge's order for 18 months of probation, and substituted it with a sentence of reformative training instead.

Principles for sentencing youthful offenders who reoffend while on probation

41 Against the backdrop of the foregoing discussion of the general principles applicable to youth offenders, I turn to the specific situation of an offender who reoffends while he is already on probation for a prior offence. Mr Lim, the learned *amicus curiae*, submitted that this fact should not constitute an absolute bar to a second order of probation being made. Mr Lim, however, suggested that the authorities he reviewed all tended to proceed as though a second probation order is *precluded* in such circumstances. Such a view also finds some support in Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at p 974, which states in general terms that "[p]robation would not be appropriate where an offender commits an offence while he is already under

probation as this shows that he has not learned from the earlier lesson".

42 In my judgment, the fact that a youthful offender has reoffended while on probation will inevitably be a *very* relevant consideration to both the identification of the applicable sentencing principles as well as the selection of the appropriate sentence. But it cannot and does not prevent the court from imposing a further sentence of probation if that is thought to be appropriate in light of all the circumstances. I will review some of the authorities that Mr Lim cited in his submissions that have touched on this point (albeit rather cursorily) before setting out the considerations that should shape the court's selection of the appropriate sentence for a youthful offender who reoffends while on probation. A number of these considerations were proposed by Mr Lim and I found them helpful, though they required some modification.

43 A convenient starting point is the decision of Yong Pung How CJ in *Siauw Yin Hee v Public Prosecutor* [1994] 3 SLR(R) 1036 ("*Siauw Yin Hee v PP*"). The offender, who was married with three children and ran his own advertising agency, was charged with the theft of four packets of batteries valued at $20.80 from a supermarket. He had been convicted of similar offences on no less than eight previous occasions. Each time, a fine or a one-day term of imprisonment had been imposed, save in one instance when he was sentenced to two months' imprisonment. The offender pleaded guilty and was sentenced by the District Court to six months' imprisonment. The offender appealed, contending that in the interests of rehabilitation, the court should order a conditional discharge with a requirement that the offender receive medical treatment for a period of three years. Yong CJ dismissed the appeal, and held at [7] that:

> ... Certainly the rehabilitation of offenders constitutes one of the objectives by which a court is guided in passing sentence. It is a corollary of this that the courts retain the discretion to decide the appropriateness of a rehabilitative sentence (such as probation) in any individual case. In virtually every case in which probation or a conditional discharge is asked for by an accused person, remorse is professed; reformation is promised. Yet, plainly, such assurances by themselves cannot form the sole basis on which a decision as to the suitability of a rehabilitative sentence is made. *The court must take into account various other factors including evidence of the accused's previous response to attempts at rehabilitating him. Thus, for example, all things being equal, a court will be far more disinclined to order probation in the case of an accused who has in the past flouted with impunity the conditions imposed by a probation order*. [emphasis added]

44 In *Public Prosecutor v Nurashikin bte Ahmad Borhan* [2003] 1 SLR(R) 52, the offender (it is not clear whether she was a youth or an adult) was acquitted by a district judge of theft of an eyebrow pencil and liquid eyeliner from a cosmetics store in a shopping centre. On appeal, Yong CJ overturned the acquittal and convicted the offender of theft in dwelling. The issue of the appropriate sentence then arose. Yong CJ thought that probation would have been appropriate, but dismissed this option when he was informed that the offender had committed the offence while on probation for a previous conviction for theft by servant. He sentenced the offender to two weeks' imprisonment instead. Yong CJ said at [27]–[28]:

> 27 I was originally minded to order a pre-sentence probation report and adjourn the issue of sentence to another day in view of the fact that the stolen items were of low value and had already been recovered, and that the respondent was a minor at the time the offence was committed. In such circumstances, a probation order under s 5(1) of the Probation of Offenders Act (Cap 252) might be more appropriate than a custodial sentence.
>
> 28 However, *I was informed by the Prosecution during the hearing that the respondent had*

committed the present offence while she was already under probation awarded for a conviction under s 381 of the Penal Code. She clearly had not learnt her lesson and I took the view that a probation order would no longer be appropriate.

[emphasis added]

45 The next three cases I turn to are decisions of the District Court. These all involved youthful offenders who had reoffended while serving a prior term of probation. In none of them did the court consider a second sentence of probation appropriate. First, *Public Prosecutor v Lim Jingyi Jasmine* [2004] SGDC 113 ("*PP v Lim Jingyi*") was a case where the offender had pleaded guilty to two charges of theft on separate and unrelated occasions. The offender was 16 years old at the time she committed the subject offences, and was already under probation for three previous charges of theft, and where four other charges of theft had been taken into consideration for sentencing. A probation suitability report indicated that probation was unsuitable. The district judge observed that the offender had displayed a repeated disregard for school rules since primary school, and that this delinquency had carried over and entrenched itself as she progressed to secondary school (*PP v Lim Jingyi* at [16]–[17]). The district judge also considered it doubtful that the offender truly "realised what being remorseful means" (*PP v Lim Jingyi* at [19]), and ultimately refused to impose a second sentence of probation even on terms that the offender reside at a hostel "which was prepared to house the [offender] if probation was ordered". He held that a "stricter and more structured form of rehabilitation than probation" was necessary, and sentenced the offender to reformative training.

46 The second case is *Public Prosecutor v Muhammad Zulkiflee Bin Mohd Iswadi* [2004] SGDC 186 ("*PP v Zulkiflee*"), where the offender was tried and convicted of rioting. At the time of the offence, he was 18 years old and barely two months into the probation term that had been imposed for a previous offence of rioting. The district judge observed that rehabilitation was the primary, but not sole, sentencing consideration for youthful offenders (*PP v Zulkiflee* at [90]). The district judge, however, thought that the offender's "prospects for reform were very slim" because he had reoffended "swiftly" by committing a *similar* offence "[b]arely two months [into] probation" (*PP v Zulkiflee* at [91]). It was also noted that rioting is a serious offence and its incidence was on the rise. The district judge thought this warranted a deterrent sentence (*PP v Zulkiflee* at [96]). He held that a "young offender who display[ed] early traits of recalcitrance [had to] be dealt with and deterred like ... adult offender[s] before they turn[ed] into hardcore recidivists", and sentenced the offender to 24 months' imprisonment and 6 strokes of the cane. Although it was not analysed in the precise terms of the analytical framework I have set out above, it is possible to analyse *PP v Zulkiflee* as one where the district judge in effect concluded at the first stage of the inquiry that the interest of rehabilitation had to yield to that of deterrence.

47 The third District Court decision is *Public Prosecutor v Vigneshwaran s/o Ganesan* [2012] SGDC 109 ("*PP v Vigneshwaran*"), where the offender pleaded guilty to assaulting a teenager with seven others. The offender was 18 years old at the time of the offence, and was already on probation for a prior offence of a similar nature. Most of his accomplices were ordered to undergo probation. The district judge agreed with the recommendation in the probation suitability report that probation was not appropriate. He noted that "there was an escalation in terms of his role and severity of the offences that he committed as compared to his previous offence" (*PP v Vigneshwaran* at [23]). The offender was thus sentenced to three months' imprisonment.

48 I will finally discuss a decision of the Hong Kong Court of Final Appeal, *Wong Chun Cheong v HKSAR* (2001) 4 HKCFAR 12 ("*Wong Chun Cheong*"), which is instructive though not entirely on point. *Wong Chun Cheong* was cited with approval by Chao Hick Tin JA in *Public Prosecutor v Saiful Rizam bin Assim and other appeals* [2014] 2 SLR 495 at [38]–[41]. The offender in *Wong Chun Cheong*

appealed to the Court of Final Appeal against his sentence of reformative training, which had been imposed for a regulatory offence, namely, participating in a lion dance in a public place without a licence. The maximum sentence for the offence under s 4C(1) of the Hong Kong Summary Offences Ordinance (Cap 228) was a fine of $2,000 and 6 months' imprisonment. A sentence of reformative training, however, carried a minimum term of incarceration of 6 months and a maximum of 3 years. The offender was 16 years old at the time he committed the offence, and had previous convictions for robbery, breach of probation order, sexual intercourse with a minor, and common assault. In each case, the offender had been placed on probation. It appears (though it is not clear from the law report) that the offender was on probation at the time he committed the offence which was before the court (*Wong Chun Cheong* at 25C). The magistrate who sentenced the offender to reformative training thought that it was necessary to save the offender from a "downward spiral into a subculture and lifestyle which [would] have him returning to the Court on more serious matters" (*Wong Chun Cheong* at 16F). The magistrate's decision was upheld on appeal to a judge.

49 The Hong Kong Court of Final Appeal disagreed with both. Ribeiro PJ, who delivered the judgment of the court, said that "at the heart of [the] appeal" was whether "it is acceptable as a matter of law to treat the offender's last offence 'as a symptom of the need for reformative treatment' and therefore, as the basis for imposing a training centre sentence, regardless of its triviality" (*Wong Chun Cheong* at 18C). Detention in a training centre was intended to be an alternative to imprisonment; thus detention should "generally [not] be regarded as appropriate where the offence is trivial" (*Wong Chun Cheong* at 21H). The court had to "have regard to the offender's character and previous conduct and to the circumstances of the offence before deciding to make the detention order aimed at his rehabilitation ... and the prevention of crime" (*Wong Chun Cheong* at 23B). While the offender was a "suitable candidate" for detention at a training centre, "the offence was plainly trivial and would normally have been dealt with by a fine or other non-custodial measure" (*Wong Chun Cheong* at 25B). The court thus set aside the order for detention at a training centre with a fine of HK$100 instead.

50 The foregoing cases illustrate that probation should not *ordinarily* be awarded in cases where an offender has reoffended on probation. Reoffending while under probation will generally be regarded as a weighty and relevant consideration militating against a further probation order as it points towards the conclusion that the offender has not learnt his lesson. But, as is almost always the case with sentencing, this is not an inflexible rule and the appropriate sentence must be determined after a fact-sensitive inquiry.

51 In my judgment, the fact that an offender is already under probation when he commits the subject offence does not constitute a bar to a second sentence of probation being imposed. The starting point must be whether there are any statutory restrictions against the grant of a second sentence of probation. The relevant provisions are s 5(1) read with s 11 of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("the POA"). Section 5(1) of the POA provides as follows:

> **Probation**
>
> **5.**—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years:

Provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order if the person —

(*a*) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and

(*b*) has not been previously convicted of any such offence referred to in this proviso, and for this purpose section 11(1) shall not apply to any such previous conviction.

52 In *Mohamad Fairuuz bin Saleh v Public Prosecutor* [2015] 1 SLR 1145, a three-judge panel of the High Court construing the meaning of the terms "sentence fixed by law", "specified minimum sentence" and "mandatory minimum sentence" held as follows (at [17]):

> 17 Having carefully considered the various arguments in the round, we concluded that the terms 'sentence fixed by law', 'mandatory minimum sentence' and 'specified minimum sentence' carry the following meanings:
>
> (a) A 'mandatory minimum sentence' means a sentence where a minimum quantum for a particular type of sentence is prescribed, and the imposition of that type of sentence is mandatory.
>
> (b) A 'specified minimum sentence' means a sentence where a minimum quantum for a particular type of sentence is prescribed, but the imposition of that type of sentence is not mandatory.
>
> (*c*) *A sentence 'fixed by law' is one where the court has absolutely no discretion as to the type of sentence (which is mandatory) and the quantum of the prescribed punishment.*
>
> [emphasis added]

53 The court considered that probation is not available as a sentencing option for adult offenders where the sentence is one fixed by law or where the offence has a mandatory or specified minimum sentence. While this does not apply to youthful offenders by virtue of s 5(1)(*a*) save in respect of sentences "fixed by law", the saving would not avail *repeat* youth offenders in certain circumstances.

54 This follows because s 11(1) of the Probation of Offenders Act, which provides that prior convictions in which the offender is sentenced to probation are "deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made", is excluded by s 5(1)(*b*). Section 5(1)(*b*) thus *precludes* a second probation order from being made where the offences on *both occasions* (*ie*, the first and second set of offences) had a "specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning".

55 In cases which do not offend this threshold bar, there is no statutory impediment to making a second probation order for an offender who has reoffended while on probation. But as I have stated above, it remains a *very relevant* fact to the sentencing matrix.

56 It should be noted in this context, that the court will then embark on the first of the two-stage inquiry I have referred to at [34] above. Reoffending while on probation could lead the court to conclude that it should shift its focus from rehabilitation to deterrence as was the case in *PP v Zulkiflee*. But even if the court is satisfied that rehabilitation retains its primacy, the court should

consider whether the fact that a further offence was committed while the offender was already under probation suggests that probation has proved inefficacious. It may also suggest that the earlier assessment of the offender's suitability for probation was misplaced. Where the probation suitability report for the second set of offences suggests that the offender is considered suitable for a second sentence of probation, the court should be mindful that a *similar assessment had previously been made*, and consider in the light of the nature of the subsequent offence whether *that assessment has since proved to be incorrect*. If it so determines, the court should then examine what might have accounted for that incorrect assessment and whether there is reason to think that a second sentence of probation would be any more effective than the first. In short, where a youthful offender has reoffended while on probation it would be incumbent on him to satisfy the court in the light of all of these considerations that probation remains a viable option and that there is no reason in all the circumstances to opt for a sentence with a greater emphasis on deterrence.

57 In my judgment, the court, when considering whether or not to order a second sentence of probation, should bear in mind the following factors:

(a) Whether the latest offence in question is serious (*PP v Adith* at [14]; *PP v Al-Ansari* at [101]; *PP v Mohamed Noh Hafiz* at [13]; *Wong Chun Cheong* at 25B). A "plainly trivial" offence such as was found to be the case in *Wong Chun Cheong* may well not displace the conclusion that a second sentence of probation is appropriate.

(b) Whether the offender's pattern of offending, seen as a whole, significantly displaces the focus on rehabilitation or at least mandates that greater emphasis be placed on deterrence within an overarching emphasis on rehabilitation. To put it another way, the question is whether the youthful offender's offending pattern justifies optimism or forebodes an "escalation" from the offender's previous offences (*PP v Vigneshwaran* at [23]).

(c) Whether there is evidence of genuine remorse and a genuine commitment to repent and turn over a new leaf (*Siauw Yin Hee v PP* at [7]).

(d) Whether there is cause for assurance that the risk factors which caused the last attempt at probation to fail have been effectively addressed.

(e) Whether there are any countervailing considerations such as the public interest in prevention or deterrence that militate against a fresh order of probation (*PP v Zulkiflee* at [87]–[96]).

58 These are merely guidelines and they are non-exhaustive. They focus on coming to grips with whether the overall signs point to cause for optimism or for pessimism as to the offender's prospects for rehabilitation. It is also important that the court carefully considers whether the particular circumstances call for a stronger emphasis on deterrence both for the successful rehabilitation of this offender as well as to ensure that others may be deterred from embarking on a similar course. The appropriate sentence is ultimately a matter for the sentencing court's discretion, and the court must endeavour to arrive at the appropriate sentence after a consideration of all the circumstances of the case in the light of the particular offender and the particular offence.

Whether a second probation order was an appropriate sentence on the facts of this case

59 In my judgment, rehabilitation remained the main sentencing consideration for the respondent in this case. He was still young and though his offending history indicated a misguided and misspent youth, there was no reason to think that he had become so hardened in his ways that rehabilitation

ceased to be the primary sentencing consideration. Nor was the nature of the offence such that it demanded a response that displaced the importance of rehabilitation altogether. But having said that, there was also a significantly heightened need for deterrence, for the following reasons:

(a) The respondent reoffended while on probation. This suggested that the earlier assessment of the respondent's suitability was misplaced, and also pointed to a lack of remorse.

(b) The Prosecution pointed to the respondent having worked around the terms of the first probation order in his reoffending. Mr Ng pointed out in oral arguments that the first probation order imposed the condition of electronic tagging for a partial duration of the order. He observed that the respondent's subsequent offences were committed once this condition had ceased to apply. This suggested that the respondent was aware of and deliberately worked around the restrictions imposed by the first probation order.

(c) There was an evident pattern of increasingly serious criminal behaviour manifested in the respondent's offending history. The respondent was sentenced to his first term of probation for theft in dwelling. His subsequent offences grew in boldness and audacity, culminating in his vandalism of public property on two separate occasions coupled with a further theft.

(d) The respondent played the most active role and was an instigator of some of what happened on the evening when the vandalism was committed. He thus bore the greatest personal culpability amongst his co-offenders.

60 In the light of rehabilitation being the dominant sentencing consideration, coupled with the heightened need for deterrence, my judgment was that the appropriate sentence was reformative training. A sentence of reformative training has been recognised as a more appropriate sentence for achieving these twin sentencing objectives (*PP v Adith* at [20]–[21]; *PP v Al-Ansari* at [101]).

61 There was one further factor which weighed heavily against the grant of a second probation order, that is, the fact that the risk factors that likely led to the respondent reoffending while on probation *continued to persist*. The reformative training suitability report identified risk in multiple domains (see [14] above). The mounting gravity of the respondent's criminal behaviour *coupled* with the persistence of these risk factors presented, in my judgment, a mix that militated strongly against imposing a second sentence of probation, and ultimately, given the circumstances that were presented in this case, it was my judgment that the district judge erred in imposing a further probation order albeit with more stringent conditions.

Whether the respondent's signs of reform afforded an adequate justification for imposing a second probation order

62 As against all this, the foremost point put forward on behalf of the respondent through his counsel was that the respondent had experienced a positive turnaround in his time at The Hiding Place. The same point was also made in a letter that the respondent's parents wrote to me subsequent to the hearing, in which they described a transformation in the respondent's behaviour borne out of his residence at The Hiding Place. The respondent's counsel further argued that the concerns I have mentioned at [59]–[61] above could be met by a sentence of probation that incorporated the requirement of residence at The Hiding Place. It was submitted on this basis that the sentence imposed by the district judge was appropriate because it provided a sufficiently rigorous and structured environment for the respondent's rehabilitation. In support of this argument, the respondent tendered a brochure that set out aspects of The Hiding Place's structured residence programme. These included a daily timetable for physical activities, academic endeavours and bible

study. Moreover, it was pointed out, as I have already mentioned, that residents were not permitted to leave the residence without a staff member's accompaniment.

63 With respect, this argument appeared to me to undermine rather than to strengthen the respondent's case for probation. At the core of the argument was *the recognition of a need for a rigorous and structured environment* for the respondent's rehabilitation. That in fact reinforced my view that reformative training was the more appropriate and suitable sentence in this case. No reason was put forward as to why, in this instance, recourse to a private residential hostel was preferable to reformative training, and it is hard to appreciate why this should be the case. Reformative training is a sentencing option that has been devised with an emphasis on rehabilitating young offenders, though as I have noted, the fact that a sentence of reformative training carries with it a minimum incarceration period of 18 months, means that this sentencing option has an added element of deterrence that enters into the sentencing matrix (*PP v Al-Ansari* at [57]–[58]). It was precisely this mix of rehabilitation and deterrence that the respondent required.

64 In my judgment, where a statutory scheme of institutional confinement has been devised by the state and placed at the sentencing disposal of the courts, the court should not ordinarily subvert this by devising alternative schemes that impose terms of probation conditioned on residence in private homes. The courts do not have either the means or the tools, nor for that matter is it our place, to second-guess legislatively crafted sentencing options which have been thought through, deliberated on and developed by policy-makers. Nor, as I observed in the course of oral arguments, should the courts place the offender in the position where he is able to simply pick and choose the terms on which he would like to be rehabilitated. This was a case where it seemed to me that the respondent's efforts were directed at seeking to persuade me that even though he clearly understood and agreed with what I thought were the relevant sentencing considerations, his chosen form of "medicine" would go down better than what the law prescribed as appropriate.

65 I acknowledged that the respondent's reform may well be indicative of remorse; and that would be a very welcome change. But in my judgment, that did not afford a firm basis for me to come to a different decision in this case, in the light of the legislative scheme put in place for the rehabilitation of youthful offenders. Accordingly, I rejected the respondent's argument that his apparent change of heart and positive turnaround since his time at The Hiding Place justified my imposing a second order of probation instead of reformative training.

Observations on the sentencing procedures adopted in this case

66 I conclude this judgment with two observations on procedural points that arose from this case. The first concerns the district judge's decision on 18 February 2015 to defer sentencing for a further period of three months *after* receiving the reformative training and probation suitability reports in order to obtain an assessment (in the form of a supplementary probation report) of how the respondent would progress at The Hiding Place. As I have mentioned above, had the respondent been sentenced at the first sentencing mention on 18 February 2015, there could have been little doubt that he would have been sentenced to reformative training. Perhaps sensing that he had been given a chance to avoid reformative training, the respondent's conduct at The Hiding Place during the three-month adjournment showed a marked improvement as compared to what had been the case up to that point. Hence, when the matter came back before the same district judge three months on, the district judge was presented with a favourable supplementary report from the probation officer.

67 There is no doubt that the remorse of an offender evidenced by his voluntary pre-sentencing reform may be a relevant factor (*Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 at [72] is a recent example). But where a sentencing judge adjourns sentencing to ascertain whether there *will*

be signs of reform pending the imposition of sentence, the conduct of the offender during the period of the adjournment may be of questionable probative value. This is because the offender, sensing that he has been given a chance to avoid what may potentially be a heavier sentence, is inevitably and strongly incentivised to put up a favourable front. I am not saying that is what this respondent has in fact done. Rather, I make this observation to explain why I doubt this will be a useful course to take. If a judge is minded nonetheless to take it, this concern should be noted and addressed in the judge's reasons for sentence in the event of an appeal.

68 The second observation concerns the breach action, which was taken on 18 February 2015. That was the same day as the first sentencing mention for the subject offences. It will be recalled that the breach action was heard by a *different* district judge in the afternoon, after the first sentencing mention had been heard in the morning (see [16]–[17] above). The district judge who heard the breach action extended the respondent's probation term for a further six months. The Prosecution argued that this extension of the probation term was a nullity. This will require me to set out and explain the relevant provisions of the POA to contextualise the Prosecution's argument.

69 Under ss 7 and 9 of the POA, a probationer who, respectively, breaches the conditions of his probation or who commits a further offence while on probation (or conditional discharge) may be dealt with for the earlier offence in respect of which the probation order was made. Section 7 applies to situations where the offender breaches the requirements of the probation order. Sections 7(1)–(3)(*a*) set out the powers of the Magistrate's Court, which we need not be concerned with here. Section 7(3)(*b*) deals with the powers of the High Court or District Court to re-sentence the offender for the offence in respect of which the probation order was made, and reads:

> [W]here the probationer is brought or appears before the High Court or a District Court and it is proved to the satisfaction of that Court that he has *failed to comply with any of the requirements of the probation order* that Court may *deal with him for the offence in respect of which the probation order was made in any manner in which the Court could deal with him if he had just been convicted before that Court of that offence*. [emphasis added]

70 Section 9 of the POA, on the other hand, applies to situations where a second offence is committed while the offender is on probation or conditional discharge. The relevant provision is s 9(5), which states:

> Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made that the person in whose case that order was made has been *convicted* and *dealt with in respect of an offence committed during the probation period* or during the period of conditional discharge, as the case may be, that court may *deal with him, for the offence for which the order was made, in any manner in which that court could deal with him if he had just been convicted by that court of that offence*. [emphasis added]

71 Thus under s 9(5), the probationer must have been convicted *and* dealt with in respect of the second offence, before the court's power arises to re-sentence the offender in respect of the first offence, for which the probation order was made.

72 Mr Ng for the Prosecution argued that the six-month extension of the respondent's probation period, which was ordered by the district judge who dealt with the breach action, was a "nullity" because the respondent had yet to be sentenced for the subject offences although he had been convicted for them. Mr Ng's argument was that the respondent therefore had not yet been "dealt with" under s 9(5) of the POA, and the court's power to re-sentence under that provision did not arise.

73 The difficulty with Mr Ng's argument is that it presupposes that the district judge acted pursuant to s 9(5) of the POA rather than under s 7(3)(*b*) of the POA. On the facts the respondent had *both* (a) committed further offences while on probation, *and* (b) breached the requirements of his probation order. There was certainly nothing on the record which suggested that the district judge was dealing with the respondent for the former and not the latter. The district judge was competent to deal with the respondent's breaches of the requirements of the probation order on the basis of s 7(3)(*b*), which gave him the power "deal with [the respondent] ... in any manner in which the Court could deal with him if he had just been convicted before that Court of that offence". I therefore do not accept that the district judge's extension of the respondent's probation was a nullity.

74 I am mindful that the district judge in this case imposed an additional condition of residence at The Hiding Place when the original order of probation was extended (see [17] above). Otherwise, merely extending probation on the same terms would seem pointless. Where the respondent has already displayed a lack of commitment to abide by the original sentence of probation, it would be unclear what purpose a mere extension could serve. In fairness to the district judge who heard the breach of probation action, aside from the imposition of the additional condition I have mentioned, it should also be noted that he may have ordered the extension merely as an interim or bridging measure, upon being informed of the three-month adjournment that the other district judge had already ordered earlier in the morning. This nonetheless underscores the difficulties that may arise when two sets of proceedings relating to prior and fresh offences are being dealt with at different times before different judges. These difficulties were alluded to by Yong CJ in *Ng Kwok Fai v Public Prosecutor* [1996] 1 SLR(R) 193, where he said at [15] that:

> It is desirable that an offender is dealt with at the same time for both the breach of the probation order or order for conditional discharge and the subsequent offence. However, the provisions of s 9 of the Probation of Offenders Act make it difficult, where the order for probation or conditional discharge is made by a court other than a magistrate's court, for the court to deal with the offender at the same time for both the second offence and the offence for which the offender had been given probation or conditional discharge. The scheme envisages that the court will have to deal with the offender for the second offence before he is dealt with, often before another court, for the first offence. *It seems to me that in such a case, in order to avoid, as far as possible, the sort of difficulty that has arisen here, the court, in dealing with the offender for the second offence, should have regard to the fact that the offender would later have to be dealt with for the offence for which he had been given probation or conditional discharge as well.* ... [emphasis added]

75 I would add that it seems to me sensible in such cases that *both* the breach action (whether on the basis of a breach of the requirements of probation under s 7 of the POA, or on the basis of the commission of further offences under s 9 of the POA) and the proceedings for the fresh set of offences, ought to be placed before the *same* district judge as far as is possible. This would also further permit the same district judge to consider the matter holistically before making any consequential orders concerning the youthful offender.

Conclusion

76 For these reasons, I allowed the prosecution's appeal. The promising developments over the few months the respondent spent in The Hiding Place are encouraging and I have urged the respondent to continue in this direction. But it would have been wrong of me to focus merely on the signs of the last few months to the exclusion of all that had transpired throughout the relevant period. It was my judgment in the final analysis that the respondent would benefit from the rigorous and structured environment for rehabilitation that reformative training will provide.

77 I would finally like to record my gratitude to Mr Lim, the learned *amicus curiae*, whose submissions I found to be thorough and helpful.