IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 283

Magistrate's Appeal No 9124 of 2019

Between

Loy Zhong Huan Dylan

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]
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v
Public Prosecutor

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See Kee Oon J:

1 This was an appeal against the decision of the District Judge ("the DJ") in *Public Prosecutor v Loy Zhong Huan, Dylan* [2019] SGDC 139 ("the GD"). The Appellant claimed that the DJ erred in sentencing him to reformative training ("RT") for the minimum period of detention of six months. He asserted that a sentence of probation would be more appropriate.

2 The Appellant had pleaded guilty to one charge of voluntarily causing grievous hurt by dangerous weapons or means by stabbing and slashing his father with a 8 cm-blade steak knife, an offence under s 326 of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC"). A further charge of voluntarily causing hurt under s 323 of the PC was taken into consideration for the purpose of sentencing.

3 After hearing the parties' submissions, I dismissed the appeal on 11 November 2019. In doing so, I delivered brief oral remarks. My reasons for my decision are now set out in full as follows.

Facts

Background

4 The Appellant had admitted to the Statement of Facts without qualification.

5 The Appellant's father was 46 years old at the date of the incident (29 November 2016). The Appellant was 16 years old, and had been staying at his paternal grandfather's flat at the material time.

6 Prior to 18 November 2016, the Appellant had been asking his father (hereinafter referred to as "the victim") for money and claimed that he needed $3,000 to pay for car rides as part of his work to survey Uber drivers on behalf of Grab. However, the victim only gave the Appellant $1,000 and transferred the same into his account.

7 After spending the $1,000, the Appellant requested for the remainder of $2,000 from the victim. The victim refused this request multiple times.

8 On 29 November 2016, the Appellant requested the amount of $2,000 from his grandparents but was also rejected by them. The Appellant subsequently decided to confront the victim at the victim's flat. He brought a steak knife with a blade length of approximately 8 cm, which he took from his grandfather's flat.

9 At approximately 8.30am, the victim was leaving for work when he saw the Appellant hiding beside a shoe cabinet outside his flat. The Appellant demanded to know why the victim refused to give him the money as requested and started to push and shove the victim. The victim warned the Appellant not to touch him, and told him that he would not give any money to him. The Appellant continued to push and shove the victim, which caused the latter to drop his key pouch. The Appellant then threw the victim's key pouch towards a drain along the corridor.

10 At approximately 8.31am, as the victim was picking up his key pouch from the drain, the Appellant took the steak knife and stabbed the victim's head continuously for about two to three times. This caused the victim to fall to the ground, upon which the Appellant grabbed the victim's key pouch.

11 The victim screamed for help and tried to stop the Appellant from using his key to enter the flat, but the Appellant continued to stab and slash the victim. He also punched and kicked the victim multiple times.

12 The victim continued to scream for help and tried to fend off the Appellant's blows with his hands. The Appellant shoved a pink recyclable bag into the victim's mouth multiple times. The Appellant also yanked a haversack that the victim was carrying, which pulled on the victim's body and shook him around the floor.

13 The victim attempted to reach for his phone to call his wife, but the Appellant tried to pull it out of his hand. During the struggle for the victim's phone, while the victim was lying prone on the floor, the Appellant kicked him in his face.

14 At this point, the victim's neighbours noticed the struggle between the Appellant and the victim, and called the police.

15 When the paramedics arrived at the incident location at approximately 8.45am, the victim was found lying on the floor, near a pool of blood. The victim was then conveyed to and admitted to Tan Tock Seng Hospital.

16 As a result of the attack, the victim sustained the following injuries:

(a) multiple stab wounds and lacerations over the scalp;

(b) left metacarpal dorsum stab wound that required wound exploration, debridement and closure by a hand surgeon;

(c) two facial lacerations; and

(d) scalp haematomas.

17 The victim was discharged from hospital three days later, on 1 December 2016, and was given 20 days of hospitalisation leave. A report dated 10 August 2017 also clarified that injuries sustained by the victim would result in scarring and potential disfigurement.

18 As a result of the incident, the victim's family (excluding the Appellant) decided to move out of the victim's flat for approximately two months as they were concerned for their safety.

The proceedings below

19 Following the incident, the Appellant was arrested and referred to the Institute of Mental Health ("IMH") for psychiatric evaluation. An IMH report dated 19 December 2016 was subsequently adduced.

20 The Appellant was eventually charged on 25 May 2018, and indicated, on 8 August 2018, that he was claiming trial as he had acted in self-defence. He was unrepresented at the time and he had applied to the Criminal Legal Aid Scheme ("CLAS") for a lawyer to be assigned to assist him. He went through the Criminal Case Disclosure Conference process and took trial dates which were scheduled for 27 February to 1 March 2019.

21 When counsel was assigned by CLAS in January 2019 to represent the Appellant, his instructions remained to claim trial. On 27 February 2019, the first day of trial, the Appellant indicated that he wanted to plead guilty. The plea of guilt was recorded on the same day.

22 In order to determine the appropriate sentence to be imposed, the DJ called for both a Reformative Training Suitability Report ("RT Report") and a Probation Suitability Report ("Probation Report"). The Appellant was found to be suitable for RT, but not probation.

23 In sentencing the Appellant to RT for the minimum period of six months, the DJ made five key findings:

(a) First, that rehabilitation would remain the dominant sentencing consideration in the sentencing matrix, but that considerations of deterrence were present given several aggravating factors (see the GD at [36]).

(b) Second, that the Appellant did not demonstrate genuine remorse (see the GD at [45]).

(c) Third, that the Appellant possessed risk factors which supported a sentence of RT (see the GD at [48], [59]).

(d) Fourth, that there was a lack of effective familial supervision over the Appellant (see the GD at [52]).

(e) Fifth, that RT should be imposed instead of probation (see the GD at [60]).

24 Dissatisfied with the DJ's decision, the Appellant brought the present appeal.

The parties' cases

25 The Appellant disagreed with all but the first of the DJ's key findings. In addition, counsel for the Appellant argued that an order of probation with strict conditions would be more appropriate considering the Appellant's circumstances.

26 The Respondent, on the other hand, submitted that the DJ's key findings were correct, emphasising the Appellant's lack of remorse and the ability of RT to serve both sentencing considerations of rehabilitation and deterrence.

27 I first analysed the applicable sentencing considerations, before addressing the parties' specific contentions.

The applicable sentencing considerations

28 The framework provided in *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz*") is readily applicable in the present circumstances. In *Boaz*, Sundaresh Menon CJ explained at [28] that a court sentencing a youthful offender who is aged 21 years and below should adopt a two-stage test:

> … 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. [emphasis added in italics]

29 While rehabilitation is generally the dominant sentencing consideration in sentencing youthful offenders, where an offender has committed a serious offence, the principle of rehabilitation "may be outweighed by other considerations such as the need for general and specific deterrence and even retribution" (see *Praveen s/o Krishnan v Public Prosecutor* [2018] 3 SLR 1300 ("*Praveen*") at [28]).

30 The need for deterrence was plain. The brutal attack that the Appellant carried out on the victim bore several aggravating factors: the attack was premeditated (the Appellant had brought a kitchen knife from his grandparents' house), vicious (the Appellant slashed, stabbed, and kicked the victim multiple times), and serious injuries were caused, including potential disfigurement to the victim. These aggravating factors were not disputed by the Appellant.

31 What the Appellant took issue with was the DJ's analysis of the second stage of the *Boaz* test. He argued that the DJ had misconstrued the legal framework in the second stage, by finding that where deterrence features as part of the sentencing considerations, a sentence of probation would be inappropriate, and RT should be imposed instead.

32 With respect, this was a misunderstanding of the DJ's position. The DJ had made clear that both probation and RT were *potentially* applicable options in the present case – she did not unequivocally dismiss the possibility of

probation outright as a sentencing option simply because there was a need for deterrence. As stated by the DJ at [36] of the GD:

> It is undisputed that rehabilitation is the dominant sentencing consideration in this case especially where the accused was 16 years old at the material time … Neither was it disputed by the defence that there was a need for deterrence … *The issue then is whether rehabilitation should take centre-stage in the sentencing matrix such that probation would typically be imposed or reformative training, which would be the 'middle ground that broadly encapsulates the twin principles of rehabilitation and deterrence'* … [emphasis added in italics]

33 It was hence clear that a sentence of probation was not automatically ruled out by the DJ. The DJ merely stated that in a situation where there was a *stronger* need for deterrence, RT would be more appropriate. I saw nothing objectionable in principle with this approach.

34 In determining the balance to be struck between the twin considerations of rehabilitation and deterrence, the key question was whether, in light of all the relevant factors, the Appellant's capacity for rehabilitation was demonstrably high such that it outweighed the public policy concerns that are traditionally understood as militating against probation (see *Praveen* at [29]).

35 In this regard, factors to be considered include (see *Leon Russel Francis v Public Prosecutor* [2014] 4 SLR 651 at [15], cited in *Praveen* at [30]):

(a) the strength of familial support and the degree of supervision provided by the offender's family for his rehabilitation;

(b) the frequency and intensity of the offender's drug-related activities (which are inapplicable in the present case);

(c) the genuineness of remorse demonstrated by the offender; and

(d) the presence of risk factors such as negative peers or bad habits.

36 I thus examined each factor.

Whether the Appellant lacked genuine remorse

37 The Appellant asserted that the DJ erred in finding that the Appellant lacked genuine remorse. He argued, *inter alia*, that his act of pleading guilty at an early juncture, his honesty and candour in his interviews with the Probation Officer and Correctional Rehabilitation (RTC) Specialist, and his reformation of his life in the past three years following the incident demonstrated his genuine remorse. Emphasis was also placed on how the DJ unfairly equated the Appellant's lack of attempts to express remorse to his parents with a lack of remorse in relation to the incident.

The Appellant's plea of guilt

38 Despite counsel for the Appellant's efforts in attempting to convince me otherwise, the Appellant could not be said to have entered an early plea of guilt. As conceded during oral submissions, when the Appellant was charged in court in May 2018, he took the position that he was claiming trial. He maintained that he had purportedly acted out of self-defence. He continued to dispute the charge for nine months, going through the Criminal Case Disclosure Conference process and taking dates for trial. His trial was scheduled for February 2019. It was only on the very first day of trial (27 February 2019), after he had obtained legal advice on being assigned counsel in January 2019, that the Appellant first indicated to the court his intention to plead guilty. The Appellant's insistence on claiming trial until the first day of trial, on the basis that the victim had assaulted him first and that he was merely defending himself out of self-defence, betrayed his lack of insight and awareness of his wrongdoing.

The Appellant's purported honesty and candour

39 I also did not think that the Appellant was wholly candid and honest in his interviews with the Probation and Correctional Rehabilitation (RTC) Officers ("the Officers"). Even as of 15 April 2019, when the Probation Report was furnished to the DJ, the Appellant's accounts were noted to be "often inconsistent" with his parents' and other agencies' accounts.[1]

(a) For instance, the Appellant's parents had reported that, prior to the offence, the Appellant displayed aggressive behaviours at home when they confronted him about the likelihood of him stealing his mother's money and jewellery. In response to his parents' confrontation, the Appellant had purportedly shouted, made verbal threats, and lashed out violently – he stabbed a knife into a pile of newspapers, broke a hole in the coffee table with a hammer and hacked the kitchen table with a knife.[2] According to the Appellant, however, he had only stabbed the knife into the newspapers out of anger after his iPhone cable went missing.

(b) The Appellant's parents reported that they had found the Appellant's mother's missing jewellery among the Appellant's clothing in his bedroom. The Appellant maintained that he could not recall this incident.

(c) The Appellant's parents informed the Probation Officer that the Appellant might have stolen his parent's belongings to purchase items for his ex-girlfriend, as they discovered receipts for jewellery and other

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1 Probation Report, Record of Appeal ("ROA") p 117.

2 Probation Report, ROA p 115.

items amounting to a few thousand dollars among his belongings. The Appellant claimed that he was not the culprit, and that the victim could have stolen the items.

40 The Appellant had sought to justify his ability to purchase a ring, necklace and wallet for his ex-girlfriend on the basis that he had earned about $4,000 from selling his online gaming accounts. However, when asked to provide documentary proof of these earnings, he was unable to do so. He specifically requested the Probation Officer to refrain from contacting his ex-girlfriend as he had already informed her that he was placed on probation.[3] This was clearly untrue.

41 Similar inconsistencies arose between the Appellant and his grandparents' account of an event in October 2018.[4] The Appellant's paternal grandfather had originally reported that during a confrontation with the Appellant at home, the Appellant had pushed him. The Appellant denied this, claiming that his grandfather had held up a wooden stool, threatened to kill him and grabbed his upper arm. It was only when the Appellant pulled his arm away that the grandfather stumbled. The Appellant did acknowledge, in his interview with the Probation Officer, that the confrontation arose from his grandfather's suspicion that he had stolen approximately $1,000 that was left on the table.

42 I noted, however, that the Appellant's grandfather subsequently claimed that he was unable to recall whether the Appellant had pushed him or if he had stumbled when the Appellant pulled his arm away. The Appellant's

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3 Probation Report, ROA p 116.

4 Probation Report, ROA p 116.

grandmother had correspondingly then claimed that the grandfather was the initial aggressor. She was however unable to recall details as to when or what precipitated the incident.[5] While the Appellant's grandparents may have been mistaken as to the details of that confrontation, it is more likely that the Appellant had lied and that they were pleading forgetfulness in an effort to cover up for him.

43 Having considered these differing accounts between the Appellant and various parties, the Appellant was, as the Probation Officer rightly observed, engaged in impression management and continually painting himself in a more positive light.[6]

44 This was consistent with the psychological assessment by the Ministry of Social and Family Development's clinical psychologist dated 3 April 2019 ("Psychological Report"). The Appellant was observed to downplay the psychological harm caused to his family by his aggressive behaviours. He sought to justify his anger towards them due to their purported mistreatment towards him (*eg,* accusing him of stealing monies). He could not articulate victim impact issues, which went towards showing low victim empathy.[7] This was also a factor that featured significantly in the RT Report – the Appellant thought of violence as a means "to help him resolve the issues he had with [the victim] over money."[8]

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5 GD at [53].

6 Probation Report, ROA p 110.

7 Probation Report, ROA p 103 and Psychological Report, ROA p 123.

8 RT Report, ROA p 99.

The Appellant's reformation

45 To the Appellant's credit, he did demonstrate rehabilitative potential. He was discernibly motivated to keep out of trouble after the offence in November 2016, and had not posed any disciplinary problems in school. He was able to lead a pro-social lifestyle and had part-time employment. These factors did demonstrate the Appellant's capacity for reform.

46 However, closer scrutiny would suggest that these indicators of reform may be more perceived than real. They reflected the Appellant's somewhat selective reform endeavours but these had to be carefully weighed alongside his consciousness of wrongdoing and his professed amenability to supervision. I address the latter consideration more fully below. It will suffice to note for now that as evidenced by their recantation of the October 2018 confrontation, it appeared that the grandparents' preferred parenting approach was to avoid "further confronting and angering" the Appellant – a point that also goes towards the lack of effective familial supervision over him. [9]

47 Crucially, the surrounding circumstances suggest that the Appellant has yet to come to terms with his offending conduct, especially with regard to how it has negatively impacted his family. Despite approximately two and a half years having elapsed since the incident (November 2016) to the time he was sentenced (May 2019), the appellant did not express any willingness to acknowledge his wrongdoing to his parents, which serves as the first and necessary step to reconciliation.

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9 Probation Report, ROA p 116.

48 Counsel sought to attribute the Appellant's lack of expression of remorse to his feeling that it would be "awkward" to apologise. It was only through counsel's written submissions on sentencing dated 9 May 2019 that the Appellant first intimated willingness to make a "public and sincere apology" to his parents.[10] To date, however, he has yet to do so.

49 As the DJ rightly noted at [41] of the GD, in the absence of any explanation as to how the Appellant's "awkwardness" had somehow spontaneously dissipated, the Appellant's sudden change of heart was "calculated to secure the most favourable outcome for himself, rather than a genuine gesture of remorse".

50 More importantly, even if the Appellant was truly remorseful but had chosen to keep his emotions to himself, he did not demonstrate cognition or acceptance that he had done wrong for almost two and a half years. After he was arrested and sent for a psychiatric assessment at IMH in December 2016, his instinctive response was to fabricate a claim of self-defence or accident and pin the blame on the victim as the purported aggressor. He did not cooperate during the police investigations and tell the truth. He maintained this stance after he was charged one and a half years later in May 2018 by deciding to claim trial.

51 To my mind, this was simply not how a genuinely remorseful and contrite offender would react. The fact that the Appellant was just over 18 years of age when he was first charged made little difference. Any offender who is sincerely penitent, even a youthful one like the Appellant, would unreservedly acknowledge his wrongdoing. He would hardly need to be prompted or advised

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10 ROA p 167.

by counsel to show his remorse. An expression of remorse should be spontaneous and evident from the offender's own words and deeds. Regrettably, there was no such spontaneity to be found in the present case. Even more regrettably, this has largely persisted to the date of the appeal.

52 Having considered all the circumstances, I agreed with the Probation Officer's view that the Appellant remained unwilling to take ownership and responsibility for his actions. I agreed that the DJ was correct in finding that the appellant was not genuinely remorseful. I was not convinced that he had truly gleaned insight, accepted responsibility, and sufficiently internalised his wrongdoing and its consequences.

Whether the Appellant's risk factors supported a sentence of RT

53 The DJ relied primarily on the following considerations in finding that various risk factors remained extant (see the GD at [59]):

(a) the psychologist's opinion that there had been a lack of negative consequences for the appellant's earlier threatening behaviour towards his family that emboldened him to inflict physical harm onto the victim;

(b) aggravating factors such as the viciousness of the attack and the fact that it was premeditated;

(c) the Appellant's moderate risk of family violence; and

(d) the Appellant's non-compliance with the Mandatory Counselling Order.

54 The Appellant took issue with the DJ's consideration of these factors, stating that she had improperly taken into account past circumstances when they

were not significant risk factors for the future. It was argued that the appellant's conduct in the two and a half years following the incident should be given greater consideration.

55 This, however, ignored the fact that the factors the DJ took into account were those that subsisted during the two and a half year period. The Appellant was assessed to have a moderate risk of "violent[ly] re-offending" in the Psychological Report.[11] Additionally, he was to attend counselling sessions pursuant to a Mandatory Counselling Order for a one year duration from December 2016 but he attended only three out of the 13 sessions scheduled between January 2017 to December 2017. He considered therapy unnecessary, despite its importance in regulating his aggressive behaviour.

56 In particular, the Appellant's persistent risk of reoffending is demonstrated through his grandfather's account of the physical confrontation in October 2018 as well as the circumstances that precipitated it (namely, the Appellant's alleged theft of cash). These facts spoke to unresolved issues on the part of the Appellant that appeared to persist, even when considering the period after the incident.

57 I was thus of the view that the DJ's assessment of the Appellant's risk factors was appropriate.

Whether the Appellant lacked effective familial supervision

58 The DJ placed significant weight on how the Appellant's grandparents would not be effective in exerting any form of firm supervision or guidance over

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[11] ROA p 110.

him (see the GD at [50]). They would also be unlikely to provide accurate accounts of any of his future infractions or breaches of probation conditions (see the GD at [54]). This was despite the Appellant's close relationship with them.

59 The Appellant took issue with this, arguing that the DJ had neglected to consider that in the period following the offence, he had reformed himself significantly under his grandparents' care and guidance. They had adopted an "advisory style of parenting" that was said to be "fully effective".[12] He further emphasised how his grandparents would teach him right from wrong by reprimanding him where necessary – the Appellant's grandmother had, for instance, scolded and caned him when he was in primary school.

60 As alluded to above at [46], I agreed with the DJ that any influence the grandparents may be able to exert over the Appellant would be limited. The Appellants' grandparents had clearly adopted a 'hands-off' approach. As evidenced by their recantation of the October 2018 confrontation, they actively avoided "confronting and angering" the Appellant, preferring to allow him to make his own decisions independently.[13] This reflected the Appellant's unwillingness to be supervised or disciplined in a familial setting.

61 While his grandparents may have disciplined him in the past, they specifically stated that moving forward, they would "refrain from angering him by being mindful of not confronting or nagging at him". They also expressed a degree of resignation, conceding that the "effectiveness of their advice would

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12 Appellant's written submissions at para 62.

13 Probation Report, ROA p 116.

depend on [the Appellant's] choice to be receptive or not, as he was independent in his decisions".[14]

62 Moreover, the Appellant's grandparents had already demonstrated a propensity to be protective of him, judging from how they changed their account of the confrontation in October 2018. This did not bode well for the Appellant's long-term rehabilitative prospects.

63 In addition, the Appellant's strained relationship with his immediate family meant that they would not be in a position to exercise supervision over him. I note that both his parents, as well as his sister, had expressed their unwillingness to reconcile with him at least for the immediate present.

64 All this suggested that there would not be adequate effective familial supervision, which remains a significant sentencing consideration.

Whether probation would be more appropriate than RT

65 In determining the appropriate sentence to be imposed, the guidance provided by Menon CJ in *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 at [78]–[79] is apt:

> 78 … the *recommendations of probation officers generally ought to carry considerable weight* …
>
> 79 In my view, it makes good sense for the court to give careful consideration to the reports prepared by probation officers. It is the probation officer who is usually *best apprised of the offender's circumstances and, hence, of his suitability for the probation regime* …
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> [emphasis added in italics]

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14 Probation Report, ROA p 118.

66 The same can be said for the recommendations of Correctional Rehabilitation Specialists, who bear the responsibility of preparing RT reports. After conducting multiple interviews with various parties and speaking to the Appellant himself, both the Probation Officer and Correctional Rehabilitation Specialist were of the view that the Appellant was suitable for RT.

67 While the Appellant had demonstrated rehabilitative potential, the offence-specific considerations as well as the need for specific deterrence were also important given the gravity of the offence. I was not persuaded that there were cogent reasons to disregard the Officers' considered recommendations.

68 I accepted the DJ's conclusion that the Appellant lacked genuine remorse and that effective familial supervision was lacking. Moreover, the subsisting risk factors rendered the Appellant a danger potentially to himself, but also to his family members. The sentencing considerations of rehabilitation and deterrence had to be taken into account and accorded due weight.

69 In the overall analysis, while I accepted that the Appellant was not without rehabilitative potential, I saw no basis to disagree with the DJ's finding that RT is a more appropriate sentencing option than probation.

Conclusion

70 For the reasons above, I dismissed the appeal. I remain hopeful that the Appellant will emerge as a reformed and more mature individual after undergoing his stint of RT, and learn to properly take responsibility for his actions and successfully reconcile with his immediate family.

See Kee Oon
Judge

Deya Shankar Dubey and Siow Wei Loong (WongPartnership LLP) for the Appellant;
Michelle Lu (Attorney-General's Chambers) for the Respondent.
