**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2020] SGHC 114**

Magistrate's Appeal No 9184 of 2019

Between

Aw Soy Tee

… *Appellant*

And

Public Prosecutor

… *Respondent*

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# JUDGMENT

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[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

## TABLE OF CONTENTS

**INTRODUCTION** ..... **1**

**FACTS** ..... **2**

BACKGROUND ..... 2

THE DJ'S DECISION ..... 3

**THE PARTIES' CASES ON APPEAL** ..... **6**

THE APPELLANT'S CASE ..... 6

THE RESPONDENT'S CASE ..... 6

**ISSUES TO BE DETERMINED** ..... **7**

**WHETHER THE "STARTING TARIFF" FOR A S 353 OFFENCE WAS A SHORT CUSTODIAL TERM** ..... **7**

THE SENTENCING FRAMEWORK AND PRINCIPLES IN JEFFREY YEO ..... 7

THE APPLICABILITY OF THE JEFFREY YEO FRAMEWORK AND PRINCIPLES TO S 353 OFFENCES ..... 10

THE APPLICABLE SENTENCING FRAMEWORK FOR S 353 OFFENCES ..... 11

*Arriving at the suggested framework* ..... *13*

*Examples of cases that fall within each sentencing band* ..... *14*

(1) Category 1 cases ..... 15

(2) Category 2 cases ..... 18

(3) Category 3 cases ..... 20

CONCLUSION ON THE FIRST ISSUE ..... 20

**ANALYSIS OF HARM AND CULPABILITY** ..... **21**

MINIMAL HARM SUFFERED BY THE VICTIM ..... 21

APPELLANT ACTED IN "FEAR AND PANIC" .....23

APPELLANT PLEADED GUILTY TO THE PREDICATE OFFENCE .....24

INCIDENT DID NOT DRAW A CROWD.....24

VICTIM WAS A PLAINCLOTHES ENFORCEMENT OFFICER.....25

APPELLANT'S PROLONGED EFFORT TO EVADE ENFORCEMENT ACTION.....26

OVERALL ANALYSIS OF THE APPLICABLE HARM AND CULPABILITY FACTORS .....26

**CALIBRATION OF THE SENTENCE: OTHER AGGRAVATING AND MITIGATING FACTORS .....28**

**CONCLUSION.....30**

# Aw Soy Tee
# v
# Public Prosecutor

**[2020] SGHC 114**

High Court — Magistrate's Appeal No 9184 of 2019
See Kee Oon J
26 February 2020

3 June 2020 Judgment reserved.

**See Kee Oon J:**

## Introduction

1 This is the Appellant's appeal against the decision of the District Judge ("the DJ") in *Public Prosecutor v Aw Soy Tee* [2019] SGDC 213 ("the decision below").

2 The Appellant pleaded guilty to a single charge under s 353 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for using criminal force on a public servant, namely Auxiliary Police Officer Yii Chai Hong ("APO Yii") from Certis Cisco Security Private Limited, while she was executing her duty as an Enforcement Officer.

3 The Appellant filed an appeal against the DJ's sentence of four weeks' imprisonment. In my judgment, the sentence imposed was not manifestly excessive. I set out the reasons for my decision to dismiss the appeal below.

## Facts

### *Background*

4 The relevant background facts are found in the Statement of Facts which the Appellant had admitted to without qualification. The Appellant is a 72-year-old male Singaporean. APO Yii, the victim, is an Auxiliary Police Officer who was, at all material times, an Enforcement Officer authorised to carry out enforcement action on behalf of the National Environment Agency ("NEA").

5 On 22 October 2018, APO Yii and her partner, Auxiliary Police Officer Parthiban ("APO Parthiban") were on duty at Boon Lay MRT Station to enforce rules against littering and spitting. At around 10.10am, they noticed the Appellant spitting twice into the drain located at Exit C of Boon Lay MRT Station.

6 APO Yii approached the Appellant and identified herself as an enforcement officer authorised by the NEA. She then informed the Appellant that he had committed an offence by spitting in a public area and requested for the Appellant's particulars. The Appellant refused to comply. Instead, he claimed that he was sick and in a rush, and started walking towards Jurong Point Shopping Centre. APO Yii followed the Appellant and asked him to stop, but he continued walking and ignored her instructions. At the entrance of Jurong Point Shopping Centre, APO Yii grabbed hold of the Appellant's right wrist to restrain him, but to no avail. The Appellant continued walking into Jurong Point Shopping Centre with APO Yii still holding on to his wrist.

7 Inside Jurong Point Shopping Centre, APO Yii placed herself in front of the Appellant and blocked his path in order to confront him head-on. However,

the Appellant suddenly grabbed APO Yii's right forearm with his left hand. When she shouted for him not to touch her, he let go of her arm and pushed her on her chest area above her breast. This caused APO Yii to stagger backwards. The Appellant then started to walk away quickly. Although APO Yii attempted to use both hands to restrain the Appellant, he struggled and manage to break free from her grip.

8 The events described at [6] above were consistent with video footage from a body camera worn by APO Parthiban. The events described at [7] above were also consistent with video footage from a CCTV camera located inside Jurong Point Shopping Centre.

9 APO Yii and APO Parthiban lost sight of the Appellant when he entered the bus interchange at Jurong Point Shopping Centre. Although the Appellant had originally intended to take a bus from the bus interchange, he was afraid of being spotted by APO Yii and APO Parthiban. As such, he exited the bus interchange, crossed the road, and walked through several HDB blocks to reach another bus stop. He then boarded a bus and headed to his workplace at Lim Chu Kang.

***The DJ's decision***

10 In the proceedings below, the Prosecution sought a sentence of at least six weeks' imprisonment. The Defence urged the court to impose a fine of $4,000.

11 The DJ held that the sentencing considerations in *Public Prosecutor v Yeo Ek Boon Jeffrey and another matter* [2018] 3 SLR 1080 ("*Jeffrey Yeo*") were applicable to the instant case even though *Jeffrey Yeo* involved the more

serious offence of voluntarily causing hurt to a public servant under s 332 of the Penal Code. In the DJ's view, offences under ss 332 and 353 were similar in nature as they were both "aimed at protecting public servants in the execution of their duties". Where these public officers were exercising law enforcement or similar duties, a sentencing "premium" was required to uphold and emphasise the authority of these officers, in order to enable them to carry out their onerous duties more effectively. Accordingly, the key sentencing consideration in the present case was that of deterrence.

12 The DJ also placed emphasis on the case of *Public Prosecutor v Chua Cheng Hong* [2018] SGDC 158 ("*Chua Cheng Hong*"), which coincidentally involved APO Yii as well. In *Chua Cheng Hong*, the accused was a 21year-old male Singaporean who was spotted flicking a cigarette butt onto the ground near the bicycle bay of Causeway Point Shopping Centre. When APO Yii attempted to block his path, the accused grabbed her arm and pushed her on the chest, causing her to lose her balance and move back a step. He fled but was subsequently identified and arrested by the police.

13 The accused in *Chua Cheng Hong* was a first-time offender. He was sentenced to three weeks' imprisonment by the District Court, but this sentence was reduced to seven days' imprisonment on appeal.[1] In the DJ's view, it was clear from *Jeffrey Yeo* and *Chua Cheng Hong* that the "starting tariff" for a s 353 offence was a short custodial term, and that fines would only be imposed in "exceptional" circumstances.

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1 High Court Minute Sheet, *Chua Cheng Hong v PP* (HC/MA 9151/2018/01)

14 The DJ declined to find that the present case lay at the low end of the low-harm, low-culpability spectrum. On the issue of harm, the DJ opined that the precedent cases tendered by the Defence should not be given much weight as they were decided pre-*Jeffrey Yeo*. In addition, although APO Yii did not suffer any visible injury, the nature of a s 353 offence meant that any hurt caused was bound to be slight or minimal. Otherwise, the Appellant could have been charged with a more serious offence under s 332 of the Penal Code.

15 On the issue of culpability, the DJ found that the Defence's submissions that the Appellant had acted in a state of "fear and panic" were disingenuous, as it was clear that APO Yii had only restrained him because of his own refusal to submit to enforcement action. The fact that the Appellant had eventually pleaded guilty to the predicate offence was irrelevant and did not detract from the fact that he had successfully evaded enforcement action. Moreover, the DJ assessed the culpability of the Appellant in the instant case to be higher than that of the accused in *Chua Cheng Hong*. In particular, he noted that the Appellant had brushed past APO Yii several times when she stood in front of him to prevent him from leaving. He also observed that the incident began outside Jurong Point Shopping Centre, where members of the public could be seen milling around, and continued all the way into the mall. Accordingly, the DJ took the position that the sentence in the instant case should be *higher* than the sentence of seven days' imprisonment imposed by the High Court in *Chua Cheng Hong*. After considering the applicable mitigating and compassionate factors, he concluded that a sentence of four weeks' imprisonment was appropriate.

**The parties' cases on appeal**

***The Appellant's case***

16 The Appellant submitted that the sentence of four weeks' imprisonment was manifestly excessive and argued that a fine of $4,000 was sufficient to achieve a deterrent effect.

17 Although the Appellant accepted that the sentencing principles in *Jeffrey Yeo* are relevant to the instant case, he contended that the DJ had erred in his *application* of these principles. This ostensibly led the DJ to arrive at the flawed conclusion that the "starting tariff" for a s 353 offence is a short custodial term, and that fines are only imposed in "exceptional" circumstances.

18 Furthermore, the Appellant argued that the DJ had failed to appreciate all the circumstances of the Appellant's case in their proper context. Specifically, it was posited that the Appellant was simply an old man who had panicked when a young female officer, namely APO Yii, had abruptly restrained him in the manner that she did. Moreover, although the incident had occurred in public view, APO Yii had been in plain clothes and it was unlikely that passers-by would have been aware of her status as an enforcement officer. Thus, on a proper application of the appropriate sentencing principles, the DJ should have found that the harm caused by the Appellant was low to negligible, and that the Appellant's culpability was likewise low.

***The Respondent's case***

19 Conversely, the Respondent submitted that the sentence of four weeks' imprisonment should stand. Specifically, the Respondent contended that the DJ had:

(a) correctly construed the facts before him;

(b) correctly appraised the applicable law and the sentencing principles; and

(c) correctly given little weight to the purported mitigating and compassionate factors.

**Issues to be determined**

20 The following issues arise for my determination:

(a) whether the DJ had erred in finding that the "starting tariff" for a s 353 offence was a short custodial term;

(b) whether the DJ had erred in analysing the harm and culpability factors; and

(c) whether the DJ had erred in giving little weight to the Appellant's mitigating and compassionate factors.

21 I address these issues in the course of formulating a sentencing framework for s 353 Penal Code offences and applying this framework to the facts of the present case.

**Whether the "starting tariff" for a s 353 offence was a short custodial term**

***The sentencing framework and principles in* Jeffrey Yeo**

22 In *Jeffrey Yeo*, a three-Judge Panel of the High Court observed that police and other law enforcement officers were frequently exposed to violence

and aggression in their frontline duties. Apart from potentially causing physical hurt, such attacks could also lead to the following undesirable consequences at the societal level (at [49]):

> First, the incidents of attack, if left unchecked, could undermine public confidence in our police officers as authority figures in society and compromise their effectiveness as a symbol of law and order. Second, with manpower constraints resulting in an already lean police-to-population ratio in Singapore, the continued abuse of police officers will have an adverse impact on the SPF's recruitment efforts. In the long term, this will have repercussions for the operational effectiveness of the police and will affect the country adversely as a whole. Third, challenges to the authority of the police pose a real risk of defensive policing. It would be unfortunate and undesirable if our police officers feel the need too easily and too often to draw their weapons or to use force in reaction to any perceived danger. All these issues are compounded by the increasingly complex and uncertain security environment with which modern-day policing is presented in a densely populated country, where emergency situations could arise at any time with dire consequences for the public. …

23 With these considerations in mind, the High Court formulated the following sentencing framework for s 332 cases involving police officers and public servants who were performing duties akin to police duties:

| **Category** | **Circumstances** | **Sentencing band** |
|---|---|---|
| 1 | Lesser harm and lower culpability | Fine or up to one year's imprisonment |
| 2 | Greater harm and lower culpability<br>or<br>Lesser harm and higher culpability | One to three years' imprisonment |
| 3 | Greater harm and higher culpability | Three to seven years' imprisonment |

24 The High Court described this framework as "a framework comprising three broad sentencing bands, within which the severity of an offence and hence the sentence to be imposed, may be determined on the basis of the twin considerations of harm and culpability" (at [57]). To assist in this inquiry, the High Court set out the following non-exhaustive list of considerations which might potentially influence the level of harm and/or culpability involved in a particular offence (at [60]):

> (a) the degree of hurt caused and its consequences;
>
> (b) the use or attempted use of a weapon or other dangerous implement or means (*eg*, biting) and its capacity to do harm;
>
> (c) the age, lack of maturity or presence of mental disorder where it affects materially the responsibility of the offender;
>
> (d) the circumstances leading to the commission of the offence (*eg*, the offender's motivations for causing hurt to the victim, whether the offence was planned or premeditated, whether it demonstrated contempt for police officers and their authority);
>
> (e) the timing and location of the offence, in particular whether it was committed within the public's view and hearing;
>
> (f) whether the offence involved a sustained or repeated attack;
>
> (g) the number of offenders involved;
>
> (h) whether the offender intended to inflict more serious hurt than what materialised;
>
> (i) whether any steps were taken to avoid detection or prosecution; and
>
> (j) the offender's criminal history and propensity.

25 The High Court further stated that the sentencing band in Category 1 encompassed the existing sentencing norm observed in the unreported case of *Public Prosecutor v Zhu Guo Feng* in Magistrate's Appeal No 177 of 2018,

under which a custodial sentence of two to nine months' imprisonment would ordinarily be imposed for cases involving hurt to police officers. It opined (at [59]) that fines would only be meted out in "*very exceptional* cases, where the offending act ranks the *lowest* in the harm-and-culpability spectrum" (emphasis added).

### *The applicability of the* Jeffrey Yeo *framework and principles to s 353 offences*

26 The Appellant did not dispute that the principles espoused in *Jeffrey Yeo* are relevant in the present case. However, he contended that these principles could not simply be "ported into the s 353 Penal Code context wholesale… with no regard to the relative severities of both offences". It was accordingly argued that the DJ had erred in finding, on the basis of *Jeffrey Yeo,* that the "starting tariff" for a s 353 offence was a short custodial term.

27 The essence of the offences in ss 332 and 353 lies in the use of force to deter a public servant from carrying out his or her duty. As the Respondent rightly conceded, the *actus reus* of voluntarily causing hurt under s 332 represents an escalation in severity from that of assault or the use of criminal force under s 353. This is self-evident from the fact that the prescribed punishment for a s 332 offence extends to an imprisonment term of seven years, whereas the prescribed punishment for a s 353 offence only extends to an imprisonment term of four years.

28 Nevertheless, and as the Appellant accepted, *Jeffrey Yeo* is relevant insofar as it highlights the grave societal consequences of attacking police and other enforcement officers to deter them from carrying out their duties, and underscores the importance of seeking deterrent sentences in cases involving

such conduct. *Jeffrey Yeo* also demonstrates that the harm-culpability matrix can be a useful tool in sentencing such offenders.

29 I find that the considerations which factor into the harm-culpability analysis for s 332 offences (see *Jeffrey Yeo* at [60], reproduced at [24] above) are equally applicable to s 353 offences. It is also evident, however, that the range of starting sentences for each category of the *Jeffrey Yeo* framework must be calibrated at correspondingly lower levels in order to reflect the lesser gravity of a s 353 offence. Accordingly, I consider this to be an appropriate juncture to set out a sentencing framework for offences under s 353 of the Penal Code, using the *Jeffrey Yeo* framework as a reference point. Such a framework would help to preserve sentencing consistency, and resolve potential uncertainty surrounding the applicability of the *Jeffrey Yeo* sentencing principles to s 353 offences.

***The applicable sentencing framework for s 353 offences***

30 My suggested sentencing framework ("the suggested framework") closely resembles the *Jeffrey Yeo* framework, but incorporates appropriate adjustments to the respective sentencing ranges for each sentencing band. The following *presumptive* sentencing ranges apply to first-time offenders who claim trial:

| Category | Circumstances | Sentencing band |
|---|---|---|
| 1 | Lesser harm and lower culpability | Fine or up to three months' imprisonment |
| 2 | Greater harm and lower culpability<br>or | Three to eighteen months' imprisonment |

| | | |
|---|---|---|
| | Lesser harm and higher culpability | |
| 3 | Greater harm and higher culpability | Eighteen months to four years' imprisonment |

31 As I had previously noted in *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 (at [33]) and *Public Prosecutor v Ganesan Sivasankar* [2017] 5 SLR 681 (at [57]), presumptive sentencing ranges are not rigid and immutable anchors, but indicative starting points which seek to guide the exercise of a court's sentencing discretion. In assessing the harm and/or culpability of an offender, courts may have regard to the factors enumerated in *Jeffrey Yeo* at [60] (reproduced at [24] above). Once the appropriate sentencing band is determined using the harm-culpability matrix, further adjustments should be made to take into consideration other relevant aggravating and mitigating factors, which may take the starting sentence out of the applicable presumptive sentencing range. To avoid infringing the rule against double counting (see *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [82] – [92]), the aggravating and mitigating factors which are considered at this stage of the inquiry must not feature in the court's earlier assessment of the offender's harm and/or culpability.

32 Like the *Jeffrey Yeo* framework, the suggested framework applies to police officers and public servants who are performing duties akin to police duties at the material time. The latter category includes (but is not limited to) Commercial Affairs Officers appointed under s 64 of the Police Force Act (Cap 235, 2006 Rev Ed) ("Police Force Act"), intelligence officers appointed under s 65 of the Police Force Act, and auxiliary police officers like APO Yii "in so

far as they are exercising any police power or carrying out any duties of a police officer" (see *Jeffrey Yeo* at [54]).

*Arriving at the suggested framework*

33 Before applying the suggested framework to the facts of the present case, I shall briefly explain how I arrived at the range of presumptive sentencing ranges for each sentencing band.

34 The *Jeffrey Yeo* framework was intended only to "clarify and rationalise the existing state of the law and not to alter it" (*Jeffrey Yeo* at [55]). I was of the view that the suggested framework should likewise be consistent with prevailing sentencing norms. Thus, in devising the framework, I undertook an analysis of existing sentencing precedents, both pre- and post-*Jeffrey Yeo*, for s 353 offences. However, for reasons which I will elaborate on shortly, I accorded greater significance to the sentencing precedents which post-date *Jeffrey Yeo.*

35 In the decision below, the DJ declined to attach significant weight to sentencing precedents that pre-date *Jeffrey Yeo*. Before me, the Appellant submitted that this aspect of the DJ's decision was both erroneous and unfair. Specifically, he contended that *Jeffrey Yeo* dealt with an offence under s 332 rather than s 353 of the Penal Code, and that sentencing precedents decided prior to *Jeffrey Yeo* "can remain relevant if they are consistent with the underlying policy considerations in *Jeffrey Yeo* (in particular, the need to protect public servants in the exercise of their duties)".

36 I agree with the Appellant that pre-*Jeffrey Yeo* sentencing precedents are not *entirely* irrelevant. Nonetheless, I take the position that such precedents should be viewed with greater circumspection for two reasons.

37 First, the High Court in *Jeffrey Yeo* drew particular attention to the increasing prevalence of offences involving aggression towards police officers and highlighted the need to adopt sentencing practices which "reflect society's opprobrium of such offences" (*Jeffrey Yeo* at [50]). While similar concerns have been touched upon in several s 353 cases decided pre-*Jeffrey Yeo* (see for example, *Public Prosecutor v Walter Marcel Christoph* [2013] SGDC 305 at [17] – [24]), it is undeniable that *Jeffrey Yeo* provided much-needed clarity on the specific policy considerations involved in sentencing those who threaten the effective discharge of police duties.

38 Secondly, available sentencing statistics indicate that more custodial sentences have been meted out for s 353 offences after *Jeffrey Yeo* was decided in November 2017. According to case disposal information on the State Courts' Sentencing Information and Research Repository, imprisonment terms were imposed in about 70% of s 353 cases (*ie*, 344 out of 488 cases) from 22 October 2001 to 5 February 2018. As at 6 January 2020, this figure had increased to about 81%. Imprisonment was imposed in about 95% of the s 353 cases (*ie,* 325 out of 343 cases) from 6 February 2018 to 6 January 2020.

39 Thus, although *Jeffrey Yeo* was not intended to alter the existing state of the law, it did have a perceptible impact on sentencing outcomes for offences under s 353 of the Penal Code. As the suggested framework is intended to reflect *current* sentencing practices, greater weight should be given to these contemporary sentencing trends.

*Examples of cases that fall within each sentencing band*

40 I now set out several examples of cases which fall within each of the three sentencing bands. Given the wide variety of factual circumstances which

may disclose an offence under s 353 of the Penal Code, I emphasise that the case examples below are merely illustrative of the types of situations which might bring an offender within a particular band. As with s 332 offences, it is not possible to exhaustively enumerate the features of s 353 offences for which particular types or lengths of sentences will be appropriate (see *Jeffrey Yeo* at [62]).

(1) Category 1 cases

41 Category 1 comprises cases where the offender's culpability and the harm caused by the offence are both low. In such cases, culpability-enhancing factors are either absent or present only to a limited extent. Generally, the victim has not suffered bodily pain or injury as a consequence of the offender's acts. The majority of s 353 cases are likely to fall within this category.

42 An example of a case which falls within Category 1 is *Chua Cheng Hong*. The sentence of seven days' imprisonment which was meted out by the High Court in that case falls within the low end of the presumptive sentencing range for Category 1 cases. This is explicable on the basis that the accused's culpability in that case was very low. Specifically, the accused was a young offender (being only 21 years of age). Furthermore, he was a first-time offender who had acted on the spur of the moment and had not caused any public disquiet through his defiance of authority.[2]

43 A more egregious example is *Public Prosecutor v Neo Rong Hao Benjamin* [2017] SGMC 40 ("*Benjamin Neo*"). In that case, the victim, a female

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[2] High Court Minute Sheet, *Chua Cheng Hong v PP* (HC/MA 9151/2018/01)

plainclothes police officer, was deployed to a club where the accused was working as an operations manager. The accused, who was intoxicated, pushed the victim on the left side of her chest despite being fully aware that she was a police officer at the material time. The Magistrate's Court sentenced the accused, who had previous unrelated antecedents, to two weeks' imprisonment. On appeal, Tay Yong Kwang JA noted that the accused had "not only defied police authority openly but also inflicted personal insult by pushing a female officer on her chest" and enhanced the sentence to five weeks' imprisonment (see *Public Prosecutor v Neo Rong Hao Benjamin* in Magistrate's Appeal No 9160 of 2017/01).[3] Although several culpability-enhancing factors were present in this case, the accused's culpability was ultimately still within the lower range.

44 Yet another example is *Public Prosecutor v Stephen Albert* [2017] SGDC 246 ("*Stephen Albert*"). In that case, the accused had fallen asleep in a taxi after consuming alcohol at a club. The victim, a uniformed police officer, woke the accused up and requested him to produce evidence of his identity. The accused directed vulgar words, racist insults and gestures at the victim and spat on the victim's face once as he was being escorted to the police car. At first instance, the accused was sentenced to two weeks' imprisonment in relation to the s 353 offence. A further similar offence involving spitting on the victim was taken into consideration. On appeal, Tay JA found that the accused's conduct was outrageous, and his acts and words were "contemptuous and contemptible". The sentence was enhanced to four weeks' imprisonment. Tay JA noted however that although it was "plainly disgusting" to be spat at on one's face, there was no evidence that the accused had any transmittable disease or that the

[3] High Court Minute Sheet, *PP v Neo Rong Hao Benjamin* (HC/MA 9160/2017/01)

victim suffered in any way from fear of infection (see *Public Prosecutor v Stephen Albert* in Magistrate's Appeal No 9254 of 2017).[4]

45 The accused persons in the cases cited above had all pleaded guilty. As these cases illustrate, fines are rarely imposed for s 353 offences in the current sentencing climate. It is telling that the Appellant was unable to identify any post-*Jeffrey Yeo* cases in which fines were imposed for offences under s 353 of the Penal Code. Even before *Jeffrey Yeo* was decided, fines were the exception rather than the norm; they had only been imposed in a relatively small minority of cases. One such case – referred to me by the Appellant – was *Public Prosecutor v An Heejung* [2015] SGDC 59 ("*An Heejung*"). The facts of this case were somewhat similar to that of *Stephen Albert.* The accused had fallen asleep inside a taxi while drunk. The victim, a uniformed police officer, told the accused to wake up. The accused suddenly kicked the victim twice on his chest before coming out of the taxi and raising his fist at him. The accused pleaded guilty and the District Court imposed a fine of $6,000, noting that he had been so inebriated at the material time that he had no recollection of the events which had culminated in his conviction (see *An Heejung* at [28]). More importantly, he was not a habitual drinker and had consumed alcohol because he was in a celebratory mood due to his recent promotion. It was apparent that this was a one-off isolated incident, and that the accused's intoxication was "completely out of his character" and he was generally of a "law-abiding and gentle nature". The District Judge was mindful that voluntary intoxication is not a mitigating factor, but concluded that a fine could be justified on the exceptional facts of this case (see *An Heejung* at [29] – [31]).

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4 High Court Minute Sheet, *PP v Stephen Albert* (HC/MA 9254/2017)

46 In view of the High Court's exhortation to adhere to sentencing practices which "reflect society's opprobrium of [aggression against police officers]" (see *Jeffrey Yeo* at [50]), it would suffice to note that, as is the case for s 332 offences, fines should generally only be imposed in exceptional cases which lie at the *lowest* end of the low-harm, low-culpability spectrum for a s 353 offence.

(2) Category 2 cases

47 I turn to consider the cases which fall within Category 2 of the suggested framework. This category covers cases where (a) the harm caused by the accused's conduct is moderate, but his culpability is low; or where (b) the accused's culpability is moderate, but the harm caused is minimal or very slight.

48 An example of a Category 2 case is *Public Prosecutor v Wong Hwee Ling Patricia* [2018] SGDC 297 ("*Patricia Wong*"). In that case, the accused claimed trial to seven charges involving physical assaults and verbal abuse against three police officers. This included one charge under s 353 of the Penal Code for spitting saliva onto a police officer's face. The accused was sentenced to three months' imprisonment for this charge. In sentencing the accused, the District Court noted that she had related antecedents under ss 353 and 323 of the Penal Code and had demonstrated a "conspicuous absence of contrition" during her trial by advancing accusations against the victims which were both spurious and scurrilous (see *Patricia Wong* at [94] – [95]). On appeal, the High Court upheld the accused's sentence for both s 353 charges (see *Wong Hwee Ling Patricia v Public Prosecutor* in Magistrate's Appeal 9251 of 2018/01).[5]

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[5] High Court Minute Sheet, *Wong Hwee Ling Patricia v PP* (HC/9251/2018/01)

49 Another example is *Public Prosecutor v Ganesan Alagappan* [2018] SGDC 74 ("*Ganesan Alagappan*"). In that case, the accused was charged under s 353 of the Penal Code for using his hands to slap away a revolver which a police officer had been pointing at him. He pleaded guilty and was sentenced to three months' imprisonment. Although the officer did not suffer any physical harm, the DJ emphasised that the accused's actions could have triggered the revolver, which would have resulted in potentially tragic consequences (see *Ganesan Alagappan* at [32]). The accused's appeal against sentence lapsed.

50 Cases involving highly demeaning or unhygienic acts, such as urinating on or throwing faeces at a victim, have also tended to attract sentences within the Category 2 range. In *Public Prosecutor v Balasubramaniam S/O Thevathas* [2018] SGDC 203, the accused pleaded guilty to three charges, including two charges under s 353 of the Penal Code. One of these charges involved the accused exposing his private parts and urinating at a police officer inside the premises of Tanglin Police Divisional Headquarters, whilst he was in an inebriated state. The accused was sentenced to seven months' imprisonment for this charge. This sentence was upheld on appeal (see *Balasubramaniam S/O Thevathas v Public Prosecutor* in Magistrate's Appeal No 9204 of 2018/01).[6] Similar sentences have been meted out in cases pre-dating *Jeffrey Yeo*. For instance, in the unreported case of *Public Prosecutor v Goh Eng Chew* (DAC-917350-2015), the accused had hurled a pail of faeces towards a prison officer and ended up splashing the officer, a staff nurse and another inmate with faeces. The prison officer suffered a superficial facial injury. Moreover, there was a risk of human immunodeficiency virus ("HIV") transmission as the accused was a

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6 High Court Minute Sheet, *Balasubramaniam S/O Thevathas v PP* (HC/9204/2018/01)

HIV-positive patient. The accused pleaded guilty to a single charge under s 353 of the Penal Code and was sentenced to eight months' imprisonment.

(3) Category 3 cases

51 Neither party referred me to any cases which attracted sentences within the Category 3 range. In my view, only the *most egregious* cases would fall within this category. These are cases which are characterised by a large number of culpability-enhancing factors, such as premeditation, repeated attacks, related antecedents, and/or the use of dangerous weapons to threaten or intimidate. Such cases are also likely to involve significant (and potentially irreversible) harm, not only to the victim but also to the institutional reputation and authority of the police force and other law enforcement agencies.

***Conclusion on the first issue***

52 I now return to the question of whether there is a "starting tariff" of a short custodial sentence where s 353 offences are concerned.

53 I reiterate that, following the suggested framework outlined above, fines are only imposed in exceptional cases which lie at the *lowest* end of the low-harm, low-culpability spectrum. Meanwhile, lengthier custodial sentences are generally reserved only for the more serious offences which involve a higher degree of harm and/or culpability. I thus agree with the Respondent that there *is* a "starting tariff" – in the sense of an *indicative starting point* – of a short custodial sentence for offences under s 353 of the Penal Code.

54 I hasten to add that this does not mean that the courts will invariably impose a custodial sentence in every s 353 case. Sentencing should not be

undertaken in an inflexible and formulaic manner. As V K Rajah J (as he then was) opined in *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24]:

> Every sentence … calls for the embodiment of individualised justice. This in turn warrants the application of sound discretion. General benchmarks, while highly significant, *should not by their very definition be viewed as binding or fossilised judicial rules, inducing a mechanical application.* [emphasis added]

55 Thus, I reject the Appellant's submission that the concept of a "starting tariff" is unduly prejudicial to the Appellant. The DJ was justified in finding that a "starting tariff" of a short custodial sentence applies presumptively in relation to all s 353 offences. This "starting tariff" is reflected in the suggested framework which I have outlined above, and is fully applicable in the present case.

**Analysis of harm and culpability**

56 I next turn to the issue of whether the DJ had erroneously analysed the applicable harm and culpability factors in the instant case.

***Minimal harm suffered by the victim***

57 In the decision below, the DJ held that limited weight should be given to the fact that APO Yii did not suffer physical injury, as the nature of a s 353 offence was such that any hurt caused was bound to be slight. Before me, the Appellant argued that this reasoning was "fundamentally problematic" as the *actus reus* of a s 353 offence is distinct from the degree of harm caused by the Appellant. Furthermore, the Respondent retains the discretion to charge a

person under s 353 of the Penal Code even if the victim has suffered serious harm.

58 I agree with the Appellant that, as a matter of general principle, the ingredients of an offence are distinguishable from the court's assessment of the degree of harm caused by an offender. However, I disagree that the harm caused in the present case was so slight as to automatically warrant the imposition of a fine. First, the s 353 precedents demonstrate that custodial sentences are imposed *even in* cases where the force in question is nothing more than "minimal, fleeting contact". Cases in point are *Chua Cheng Hong* and *Benjamin Neo*, where custodial sentences were imposed even though the accused persons in those cases only came into momentary contact with their victims, and did not cause any physical injury.

59 Secondly, the Appellant's act of pushing APO Yii, a *female* enforcement officer, on the *chest* area above her breast, was insulting not only to her authority but also to her personal dignity as a woman. The same point was recognised in *Benjamin Neo*, where Tay JA opined that the accused had "not only defied police authority openly but also inflicted personal insult by pushing a female officer on her chest".[7] In my view, the amount of harm which APO Yii suffered should not be trivialised simply because she did not sustain any form of physical injury.

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7 High Court Minute Sheet, *PP v Neo Rong Hao Benjamin* (HC/MA 9160/2017/01)

***Appellant acted in "fear and panic"***

60 The Appellant maintained his position that he had acted in a state of "fear and panic" because APO Yii had abruptly laid her hands on him. During the hearing, it was emphasised that the Appellant had merely reacted as an elderly man would because he did not know what APO Yii, a young female officer, might possibly do to him.

61 I am unable to accept this submission which is, with respect, contrived and wholly unconvincing. From the video footage and from the Statement of Facts, it is evident that APO Yii had only attempted to physically restrain the Appellant *after* she had (a) introduced herself as a law enforcement officer, (b) informed the Appellant of his offence, and (c) requested for the Appellant's particulars. The Appellant did not provide APO Yii with these particulars and began to walk away quickly despite her instructions for him to stop. It was *only then* that APO Yii had grabbed his wrist to prevent him from leaving the scene. In these circumstances, I am unable to see how the Appellant could have imagined that APO Yii was "laying hands" on him for some ulterior or sinister purpose.

62 The Appellant also contended that the instant case had to be contrasted with other cases in which the "accused was the aggressor at the outset and was already behaving in such a manner before any enforcement action had been attempted in respect of that accused". I do not find this comparison to be helpful. It is true that APO Yii had first made physical contact with the Appellant. However, APO Yii's act of grabbing the Appellant's wrist had only been necessary because of the Appellant's blatant attempt to evade enforcement action by refusing to provide APO Yii with his particulars. Moreover, his

reactions were disproportionately aggressive. He had grabbed her forearm and pushed her on her chest area above her breast with some force, and had also struggled in order to break free from her grip. Seen in this light, the Appellant's culpability is not very far off from that of an "initial aggressor" who pre-emptively applies criminal force on a police officer in order to prevent him/her from carrying out his/her enforcement duties.

***Appellant pleaded guilty to the predicate offence***

63 The Appellant emphasised the fact that he had pleaded guilty to the predicate offence of spitting under the Environmental Public Health Act (Cap 95, 2002 Rev Ed) and had been punished with a fine of $400. It was strenuously argued that the present charge had to be viewed in light of this predicate offence, and that "any sentence imposed on [the Appellant] ought to be proportional to his conduct as a whole".

64 I agree with the DJ and the Respondent that it is not helpful to speak of a 'predicate offence' in the present context. The fact that the spitting offence was a minor regulatory offence bears little relation to the mischief which s 353 of the Penal Code is designed to address. It is clear that s 353 is concerned only with the severity of what the Appellant did in seeking to evade apprehension.

***Incident did not draw a crowd***

65 The Appellant also urged me to give less weight to the fact that the incident had occurred in a public area. It was stressed that the altercation between the parties had not drawn a crowd, and that none of the bystanders had seen fit to intervene or to assist either party.

66 While I acknowledge that there is some force in these arguments, I am unable to discount the fact (as evidenced by the video footage) that a substantial number of passers-by had seen and probably also heard the exchange between the parties. Further and in any event, I consider that the absence of public disquiet is a *neutral*, and not a mitigating factor. It does not, in and of itself, justify a non-custodial term.

***Victim was a plainclothes enforcement officer***

67 Next, the Appellant highlighted the fact that APO Yii was a plainclothes enforcement officer. He contended that this was significant in two aspects:

(a) first, it exacerbated the "fear and panic" experienced by the Appellant upon being physically restrained by APO Yii; and

(b) secondly, it lessens the detrimental impact of the Appellant's conduct on the institutional reputation and authority of Singapore's law enforcement agencies, as onlookers "may not even have been aware that [APO] Yii was a public servant".

68 The first argument was clearly a non-starter. The Appellant cannot reasonably claim to have been unaware of APO Yii's identity as she had expressly introduced herself to him as an NEA-authorised officer. It is also difficult to see how APO Yii's unassuming attire (*ie* a black polo T-shirt and black pants) could have made her any more intimidating than a uniformed law enforcement officer, much less cause the Appellant to react in irrational fear and panic.

69 Turning to the second argument, I acknowledge that APO Yii's attire may have influenced the public's perception of her interactions with the

Appellant. It may not have been obvious to an observer that she was carrying out enforcement duties, or that the Appellant was refusing to comply with her lawful directions. As stated at [66] above, however, the absence of public disquiet is merely a *neutral* factor. The fact that APO Yii was not attired in uniform was not so exceptional as to warrant the imposition of a non-custodial sentence.

***Appellant's prolonged effort to evade enforcement action***

70 Finally, I note that the DJ characterised Appellant's conduct as a prolonged effort to evade enforcement action rather than a single "one-off" contact. This was because the Appellant had persistently ignored APO Yii and had even brushed past her on several occasions, despite her repeated attempts to stop him from walking off. The DJ held that this "increased [the Appellant's] culpability" and assessed him to be more culpable than the accused in *Chua Cheng Hong* (see [38] – [39] and [43] of the decision below). I agree with the DJ's reasoning and uphold his finding that the prolonged nature of the Appellant's conduct is a relevant culpability-enhancing factor.

***Overall analysis of the applicable harm and culpability factors***

71 Having conducted a holistic review of the harm and culpability factors outlined above, I am of the view that this is a case that falls squarely within Category 1 of the suggested sentencing framework. The harm caused by the Appellant was slight, although not negligible. The culpability of the Appellant is likewise situated within the low end. While I do not accept that he had simply reacted out of fear or panic, it is clear that his actions were spontaneous rather than premeditated. In addition, although the offence was committed in a public area, its effect on public perception and public order was minimal because

(a) APO Yii was in plain clothes, and (b) the incident was evidently not disquieting enough to warrant interference by members of the public, who appeared to regard the confrontation between the Appellant and APO Yii with more curiosity than alarm.

72 All that being said, it is equally clear to me that this is not a case in which a fine would be sufficient. As stated at [46] above, fines are only imposed in *exceptional* cases – cases where the harm suffered by the victim is extremely trivial, *and* where the accused's culpability has been attenuated to a very significant extent. This was not such a case.

73 My decision to impose a custodial sentence is also consistent with the sentencing outcome in *Chua Cheng Hong*. Like the Appellant, the accused in *Chua Cheng Hong* had acted on the spur of the moment and his actions had not resulted in any real public disquiet. Nevertheless, and notwithstanding that the accused was a young offender (being only 21 years of age at the material time), Hoo J saw fit to impose a custodial sentence of one week's imprisonment.

74 Taking into consideration the Appellant's mature age, as well as the fact that he had persistently refused to comply with APO Yii's directions, I am of the view that his sentence should be higher than the one-week imprisonment term which had been imposed on appeal in *Chua Cheng Hong*. I find, on a preliminary assessment, that a sentence of four to five weeks' imprisonment would appropriately reflect the levels of harm and culpability involved in the present case.

75 I now proceed to the final stage of the suggested framework, which requires me to ascertain if there are any other aggravating and/or mitigating factors which may warrant a departure from this presumptive sentencing range.

**Calibration of the sentence: Other aggravating and mitigating factors**

76 I note that there are no other culpability-enhancing circumstances (*eg* intoxication, public disquiet, injury suffered by the victim) in the present case. There are also no significant offender-specific aggravating factors.

77 The Appellant averred that in addition to the harm and culpability factors highlighted above, there were also a "myriad" of mitigating and/or compassionate factors which ought to have entitled the Appellant to a sentencing discount. These may be summarised as follows:

(a) the Appellant's conduct was one-off and entirely uncharacteristic of him;

(b) the Appellant is sincerely remorseful, as evinced from the fact that he pleaded guilty at the earliest opportunity;

(c) the Appellant is willing to compensate APO Yii for her out-of-pocket expenses;

(d) the Appellant is a first-time offender; and

(e) the Appellant is a civic-minded individual who has spent nearly his entire career in the public service.

78 I recognise that there are relevant mitigating factors. The offence was one-off and out of character, given the Appellant's previous clean record and his contributions as a public servant, in which capacity he had served for a total of 34 years. He had also pleaded guilty at the earliest opportunity. I accept that he is unlikely to reoffend and that the concern for specific deterrence is correspondingly attenuated to a certain extent.

79 However, having regard to the sentencing precedents and the applicable sentencing framework, I am of the view that appropriate weight was attached to the mitigating factors in the DJ's overall calibration of the sentence. These mitigating factors are not exceptional enough to warrant the reduction of the Appellant's sentence from an imprisonment term to a fine. I reiterate that it is of vital importance to ensure that police and other officers who are at the frontline of law enforcement are adequately protected in the exercise of their duties. These officers frequently deal with unreasonable and uncooperative individuals and are often at the receiving end of verbal abuse and resistance, as well as retaliatory acts of force and aggression. As the High Court observed in *Jeffrey Yeo* (at [49]), such conduct can lead to serious undesirable consequences at the societal level if left unchecked. The sentence of the court must therefore effectively convey the message that such actions are completely unacceptable.

80 Having weighed the relevant sentencing considerations, I see no reason why the sentence should be lower than the preliminary sentencing range I have identified at [74] above. I find that the sentence of four weeks' imprisonment is appropriate and proportionate on the facts of this case, and is aligned with the Category 1 sentencing precedents I have cited at [42] – [44] above.

**Conclusion**

81 In conclusion, I agree with the DJ that the custodial threshold has been crossed. The sentence of four weeks' imprisonment imposed by the DJ is not manifestly excessive in the circumstances. I therefore dismiss the appeal.

See Kee Oon
Judge

Wong Hin Pkin Wendell and Andrew Chua Ruiming (Drew & Napier LLC) for the appellant;
Krystle Chiang (Attorney-General's Chambers) for the respondent.