IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 57

Magistrate's Appeal No 9073 of 2019/01

Between

Public Prosecutor

… *Appellant*

And

Abdul Qayyum bin Abdul Razak

… *Respondent*

Magistrate's Appeal No 9073 of 2019/02

Between

Abdul Qayyum bin Abdul Razak

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Young offenders] — [Community based sentences]

Public Prosecutor
v
Abdul Qayyum bin Abdul Razak and another appeal

[2020] SGHC 57

High Court — Magistrate's Appeal No 9073 of 2019/01 and 02
Sundaresh Menon CJ
3 October 2019, 10 March 2020

19 March 2020

Sundaresh Menon CJ:

Facts

1 Abdul Qayyum bin Abdul Razak ("the Appellant") joined a group of friends to attack a victim, as a result of which the latter sustained a cut below his eye. Arising from this, the Appellant pleaded guilty to a charge of unlawful assembly, an offence punishable under s 143 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). Although the Appellant was 20 at the time of the offence, and 21 at the time of sentencing, the District Judge declined to call for a probation report because, among other things, the Appellant had previously been convicted of a similar offence of unlawful assembly, for which he had been sentenced to 18 months' probation. The District Judge accordingly sentenced the Appellant to imprisonment for a term of one month. Both the Appellant and the Prosecution appealed against the sentenced imposed, and they respectively alleged it to be manifestly excessive and manifestly inadequate.

2 At the first hearing of this appeal, I directed that the appropriate pre-sentencing reports be furnished. Three reports were prepared, and while the Appellant was deemed unsuitable for probation, he was deemed suitable for a Day Reporting Order ("DRO") and a Community Service Order ("CSO"). The parties subsequently appeared before me on 10 March 2020 to make their submissions on the appropriate sentence that I should impose in the light of the pre-sentencing reports.

The parties' submissions

3 The Prosecution maintained that, in all the circumstances, the Appellant ought to be sentenced to a term of imprisonment of three months. In this vein, it was submitted that neither the retrospective nor the prospective rationales for applying the presumptive dominance of rehabilitation as a sentencing consideration when dealing with young offenders applied to the Appellant with any real force. The retrospective rationale was said to be inapplicable because the Appellant was just under the age of 21 at the time of the offence, and thus on the "cusp of adulthood". Further, he was already a husband and father, such that the offence was "hardly one [demonstrating] youthful folly and inexperience". The prospective rationale of discouraging future offending through rehabilitation was also inapplicable, since the Appellant was over the age of 21 at the time of sentencing, and had reoffended shortly after having undergone probation for the same offence. Hence, a deterrent, rather than rehabilitative, sentence was warranted in this case.

4 Ms Sadhana Rai, who appeared for the Appellant, submitted on the other hand that I ought to regard the Appellant as a youthful offender, and choose a combination of community-based sentences that would hold the promise of securing the best prospects for bringing about real change on the part of the

Appellant. She submitted that while there were risk factors, it was better to acknowledge these and to attempt to address them through a carefully chosen combination of community-based orders that would enhance the Appellant's chances of successfully making some much needed changes in his life. In this regard, she pointed out, for instance, that a short custodial term on its own would be purely episodic and would not be accompanied by a Mandatory Aftercare programme that would otherwise have provided some form of ongoing support and structure to help in the Appellant's reform efforts. As against this, a DRO would afford him a targetted and sustained framework that would help bring about lasting change. Moreover, if deterrence was thought to be needed, a Short Detention Order ("SDO") could be added, while some element of retributive interests could be secured by a CSO.

My decision

5 In *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 ("*Karthik*"), I addressed the approach that the court ought to take towards youthful offenders on the cusp of majority. I observed that it has long been recognised that rehabilitation is the central concern, presumptively, for offenders who are under the age of 21 at the time of the offence and at the time of sentencing (see, for instance*, Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [21]). But the situation was less clear in cases where, by the time of sentencing, the offender was past the age of 21. That was the question I had to consider in *Karthik.* In approaching that question, I distinguished between what I referred to as the prospective and retrospective rationales underpinning the way in which we typically approach the sentencing of young offenders. I said, at [37] of *Karthik*, that there are at least two primary reasons justifying the view that youthful offenders ought ordinarily to be sentenced on the basis of rehabilitation being the dominant sentencing consideration:

(a) First, there is the retrospective rationale, which seeks to justify giving a young offender a second chance by excusing his actions on the grounds of his youthful folly and inexperience. This rationale rests on the offender's age at the time of the offence, in so far as it emphasises his relative lack of maturity and state of mind when committing the offence.

(b) Second, there is the prospective rationale, which seeks to justify rehabilitation as the preferred tool to discourage future offending on the grounds that (i) young offenders would be more receptive towards a sentencing regime aimed at altering their values and guiding them on the right path; (ii) society would stand to benefit considerably from the rehabilitation of young offenders who have many potentially productive and constructive years ahead of them; and (iii) young offenders appear to suffer disproportionately when exposed to the typical punitive options, such as imprisonment, as compared to adult offenders. These considerations rest upon the offender's age at the time of sentencing, in so far as they emphasise his mentality and outlook at the time he is facing the consequences of his earlier criminal conduct.

6 As I noted in the same judgment, a sensible approach had to be taken in this context, especially in relation to offenders who are at the margins of these categorisations based on age. I summed up the position as follows (*Karthik* at [58]):

> In my judgment, the appropriate approach that the court should take in relation to offenders … who are at or below the threshold age of 21 at the time of the offence but above that age by the time of sentencing is to examine all the facts of the case – including the offender's actual age at each of the two material points in time, the length of the delay between them, and the available evidence of the trajectory of the offender's rehabilitative progress in the intervening period – and

> determine, in the light of these facts, whether it is appropriate to treat the offender as a youthful offender such that the presumption that rehabilitation is the key sentencing consideration continues to apply.

Applicability of the retrospective rationale

7 The present offender fell in a similar situation. He was 20 at the time of the offence and 21 at the time of sentencing.

8 In *Ho Mei Xia Hannah v Public Prosecutor and another matter* [2019] 5 SLR 978 ("*Hannah Ho*"), the offender, who had committed various offences, including voluntarily causing hurt to a public servant under s 332 of the Penal Code, was 20 years of age both at the time of the offence and at sentencing. Nonetheless, after taking into account the following factors, See Kee Oon J considered that "the need for general and specific deterrence … displaced the presumptive emphasis on rehabilitation" (*Hannah Ho* at [92]):

(a) The offence committed was a "serious one that carried an imprisonment term of up to seven years and caning" (*Hannah Ho* at [86]).

(b) The offence under s 332 took place in the context of a more protracted assault on the police officers, during which she had punched, kicked and bitten the officers, while also hurling abusive words at them (*Hannah Ho* at [87]).

(c) The *potential* harm of the offender's act of biting the police officers was greater than in cases where an offender uses his bare hands (*Hannah Ho* at [89]).

(d) The offender had a related antecedent as she had been convicted and fined $1,500 for disorderly behaviour in an encounter with police

officers approximately two months before the commission of the set of offences before See J. This was relevant as it demonstrated her disregard for the authority of police officers (*Hannah Ho* at [90]).

(e) The offender was "already 20 at the time of the offences and when she was sentenced, and therefore was not a particularly young offender." In See J's view, "the prospective and retrospective rationales for placing emphasis on rehabilitation apply with less force where the offender is on the cusp of being sentenced as an adult offender over 21. It is in this context that the respondent's observations that the [offender] had been running an online business and essentially functioning as an adult were relevant" (*Hannah Ho* at [91]).

Having regard to all these factors, See J upheld the District Judge's decision *not* to call for a probation report, and upheld the 21 weeks' imprisonment term that had been imposed on the offender.

9 I accept that in cases where a young offender is already past the age of 21 by the time of sentencing, a more nuanced approach should be taken in assessing the relevance of the *prospective* rationale for placing emphasis on rehabilitation. I elaborate on this below. But in so far as *Hannah Ho* suggests that the *retrospective* rationale should apply with little force to an offender who is on the cusp of turning 21 years of age at the time of the offence, I disagree. As I observed at [47] of *Karthik*,

> … there is *nothing to displace the continuing relevance of the retrospective rationale to offenders who are aged 21 or below at the time of the offence but above that age by the time of sentencing.* It does not appear from the authorities … that the prospective rationale is considered more important than the retrospective rationale. Indeed, in so far as culpability is frequently viewed as among the most important indicia of the gravity of an offender's criminal conduct and, hence, of the sort

> of punitive response that is called for, the retrospective rationale may be seen as remaining a very important justification. [emphasis added]

10 Such an approach gives the "benefit of the doubt" (*Singapore Parliamentary Debates, Official Report* (10 November 1993), vol 61 at col 936 (Yeo Cheow Tong, Minister for Community Development)) to any young offender under the age of 21. As the Appellant in this case was just under the age of 21 at the time of the offence, the retrospective rationale was plainly applicable. I should state, however, that I do not read *Hannah Ho* as standing for a contrary position. Rather, See J was concerned with the overall gravity of the offences in question and the specific issues presented by the offender who was before him. On *those facts*, he came to the view that neither the retrospective nor the prospective rationale provided a sufficient basis for placing rehabilitation at the centre of the court's sentencing consideration. That is, of course, a view the court was entitled to take.

The Appellant was a youthful offender

11 Returning to the facts before me, given that the Appellant was over 21 years old at the time of sentencing, the "prospective rationale would not apply … as strongly, if at all" (*Karthik* at [45]). Applying *Karthik* at [58] (see [6] above), the question for me was thus whether, in all the circumstances, it was appropriate to treat the Appellant as a youthful offender, with rehabilitation remaining the primary concern. In my judgment, that indeed was the case. I based this on the following points in particular.

12 First, the Corrections Specialist had assessed the Appellant and found him suitable for DRO, which is a targetted rehabilitative sentencing option. It affords the Appellant a structured framework within which he must report to the Day Reporting Officer periodically and attend programs directed at particular

issues that he will need to work on. Second, since the commission of the offence about 21 months ago, the Appellant had remained crime free. Third, during that period, he had kept regular employment and endeavoured to improve his employment status. Ms Rai informed me that he had recently secured a more stable job with better compensation. Fourth, he had a young family that was largely intact with a supportive wife, and this provided him with the strongest possible reason to *want* to reform himself. Fifth, he had secured a rental flat to provide a stable home for his family. These factors led me to think that the Appellant was not beyond hope.

13 It would be wrong to think that the way ahead is going to be all clear. He remained susceptible to problems that needed to be addressed, especially with respect to his negative peer influences, his anger management issues, and his substance abuse and tendency to consume alcohol to intoxication. But, if his wife, his young children and his chance to rebuild his life with his family with the help and support of the State were not going to be enough to motivate him to address these issues, then I did not think a few months of imprisonment would do so either.

The sentence

14 In terms of the combination of sentences, I accepted the recommendations of the Corrections Specialist, and sentenced him to the following:

(a) First, a DRO for a period of 12 months. He was to attend programmes determined by the Day Reporting Officer with a particular focus on the three areas that I identified, namely, his need to address his negative peer influences, his anger management issues, and his substance abuse and tendency to consume alcohol to intoxication. As recommended by the Corrections Specialist, he was also to be monitored by electronic monitoring and to remain indoors from 10pm to 6am throughout the period of the DRO, unless otherwise varied by the Day Reporting Officer or by myself.

(b) Second, a CSO of 120 hours, to be served at a Mosque.

(c) Third, in order to address the need for deterrence, I imposed a SDO of seven days. In my judgment, this was sufficient to enable him to experience a taste of the loss of liberty that would be the consequence if he fails to change his life. The SDO was to be deferred until further order, and parties were to return to court within four weeks of the order to submit on the appropriate date of commencement of the SDO. The deferment was granted so that the SDO could be served at a time when he could go on leave from his employment (if possible), thereby minimising the disruption to his efforts to rebuild his life. Bail was extended on the same terms.

Conclusion

15 I regarded this as his last chance; nonetheless, it was a *real* chance for him to break out of the cycle of bad behaviour, and I expressed hope that he would take it. As I explained to the Appellant, if he failed to comply with his obligations under the sentence, he would find himself before me, and could expect to feel the full weight of the law. In passing a community-based sentence, the court retained the power to vary or revoke the orders made, and to sentence the Appellant afresh should he breach his obligations under the orders (ss 351 and 352 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)).

Sundaresh Menon
Chief Justice

Hay Hung Chun and Lim Shin Hui (Attorney-General's Chambers) for the appellant in MA 9073/2019/01 and the respondent in MA 9073/2019/02;
Sadhana Devi d/o Daevnrd Rai and Pramnath Vijayakumar (Law Society Pro Bono Services) for the respondent in MA 9073/2019/01 and the appellant in MA 9073/2019/02.