Goh Lee Yin v Public Prosecutor
[2005] SGHC 226

Case Number : MA 112/2005

Decision Date : 09 December 2005

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Spencer Gwee (Spencer Gwee and Co) for the appellant; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Goh Lee Yin — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Appellant pleading guilty to charges of theft in dwelling – Appellant suffering from kleptomania – Appellant appealing against two-and-a-half-month custodial sentence – Whether sentence manifestly excessive and should be varied to probation – Section 380 Penal Code (Cap 224, 1985 Rev Ed), s 5(1) Probation of Offenders Act (Cap 252, 1985 Rev Ed)

9 December 2005

Yong Pung How CJ:

1 The appellant pleaded guilty to two charges of theft in dwelling under s 380 of the Penal Code (Cap 224, 1985 Rev Ed) and consented to have four other charges under the same section taken into consideration for the purpose of sentencing. The appellant was sentenced to two and a half months' imprisonment. She appealed against her sentence. I allowed the appeal and varied her sentence to one of 24 months' probation with appropriate conditions, for reasons which I set out below.

The charges

2 The appellant, a 24-year-old female, pleaded guilty to the following charges of shoplifting:

> **DAC 19595/2005**
>
> You, … are charged that you, on the 16th day of May 2005, at or about 4.40 pm, at 'Metro' Departmental Store, Paragon Shopping Centre, Orchard Road, Singapore a place used for the custody of property, did commit theft of four bottles of 'Clarins' Sun Care lotions valued $180.00cts (each $45.00cts) in the possession of the Duty Manager, Mdm Amy Ho and you have thereby committed an offence punishable under Section 380 of the Penal Code, Chapter 224.
>
> **DAC 24015/2005**
>
> You, … are charged that you, on the 16th day of May 2005, at or about 4.00 pm, at 'Cold Storage' Supermarket, Novena Square, Thomson Road, Singapore, a place used for the custody of property, did commit theft of the following:
>
> (a) 18 boxes of Shaver Cartridges valued $234.90cts (each $13.05cts)
>
> (b) One Gillette Razor valued $16.90cts
>
> (c) Eight packets of Scholl insoles valued $37.60cts (each $4.70cts)

(d) One Scholl Skin File valued $46.30cts

(e) One Oral dental Floss valued $4.85cts

(f) One Oral satin Floss valued $5.90cts

having a total value of $306.53 in the possession of the Duty Manager, Mr Ang Kwong Chye and you have thereby committed an offence under Section 380 of the Penal Code, Chapter 224.

3 These four other charges which had been taken into consideration had been brought in respect of one shoplifting offence also committed on 16 May 2005 (District Arrest Case No 24016 of 2005 ("DAC 24016/05")), two shoplifting offences committed on 12 May 2005 (District Arrest Cases Nos 24017 and 24018 of 2005) and one shoplifting offence committed on 27 April 2005 (District Arrest Case No 24019 of 2005).

Background facts

4 On 16 May 2005 at or about 4.00pm, the appellant entered Cold Storage Supermarket located at Novena Square, Thomson Road. She stole several shaver cartridges, a razor, shoe insoles, a skin file and dental floss (as set out in DAC 24015/05) and placed them into three empty Cold Storage plastic bags that she had taken. She then went to Tangs Departmental Store at Orchard Road and stole a body shaving system (which formed the basis of DAC 24016/05).

5 At or about 4.40pm that same day, the appellant proceeded to Metro Departmental Store at Paragon Shopping Center, Orchard Road, where she stole four bottles of "Clarins" Sun Care lotion and placed them into the Cold Storage plastic bags that she was still carrying. She was detained while leaving the store via the exit on the third level and arrested by the Police. She was then charged in the Subordinate Courts the following morning.

6 The appellant was out on bail when she committed the offences of 16 May 2005. She had been previously arrested for her offences of 27 April 2005 and 12 May 2005.

7 Pursuant to the Prosecution's application, the court ordered the appellant to be remanded for two weeks at the Institute of Mental Health for a psychiatric examination. A report dated 30 May 2005 was prepared by Dr Jerome Goh Hern Yee ("Dr Goh"), a Registrar at the Department of Forensic Psychiatry, Woodbridge Hospital and Institute of Mental Health. Dr Goh diagnosed the appellant as suffering from kleptomania, an impulse control disorder. However, he certified that the appellant was not of unsound mind at the time of the offences as she was aware of her actions and that they were wrong, and that she was fit to plead in a court of law.

The psychiatric reports

Dr Goh's report

8 The Prosecution tendered the report prepared by Dr Goh at the trial below. Dr Goh stated in the report that the appellant told him that she had been shoplifting every year since she was nine years old. She was first arrested in 2003 but was let off with a warning. In 2004, she shoplifted about once a week. In May 2004, she was arrested in the US for theft while visiting her boyfriend who was studying at a university there. When her boyfriend discovered her stealing habit, he insisted that she seek treatment and she started seeing a counsellor upon returning to Singapore. After she was again arrested for shoplifting in September 2004, she sought help from a psychiatrist, Dr Tan Chue Tin

("Dr Tan"). She was prescribed Prozac (fluoxetine) 20mg daily and was reviewed on a monthly basis. The frequency of her shoplifting had decreased to virtually nil during the first three months of 2005. However, she then stopped taking her medication and did not go to see her psychiatrist. In the weeks before her arrest on 27 April 2005, *ie*, from late March to early April 2005, she had been stealing about three to five times a week. Her arrest on 16 May 2005 took place just before she was due to fly to the US on 18 May 2005 to attend her boyfriend's graduation ceremony.

9 The appellant told Dr Goh that she stole things without planning. She was well able to afford the items she stole and did not have any acute need for them. Her motivation to steal was "for the thrill" of not getting caught. She was remorseful about her actions and felt much guilt and regret for hurting and causing distress to those close to her, and for breaking her promise to them that she would not steal again. Dr Goh described the appellant's kleptomaniacal condition as follows:

> Before she shoplifts, she would feel an urge to steal associated with a sense of anxiety, like a "rush, tension", which would build up when she tries to fight it, until rational thoughts get displaced. She said she proceeded to shoplift despite knowing that it was "not worth it" and having resolved never to do so again. She said that only when she shoplifted would this "tension" be released and she would be at peace", but only for a while.

10 Dr Goh noted that the appellant had done well at school and had no conduct or disciplinary problems. She had no history of alcohol or substance abuse. Dr Goh opined that the appellant had responded favourably to treatment in the past and would need long-term psychiatric follow-up and treatment for her condition.

Dr Tan's reports

11 Counsel for the appellant, Mr Spencer Gwee ("Mr Gwee"), tendered two reports from the appellant's psychiatrist, Dr Tan, dated 16 May 2005 and 19 August 2005. In the reports, Dr Tan stated that the appellant suffered from kleptomania, an impulse control disorder associated with the build-up of tension and anxiety or depression which led to an uncontrollable pathological urge to steal, thus affording immediate relief to the overwhelming, overpowering mental distress. The appellant had suffered from poor self-esteem since young, and frequently had lonely, depressive spells and thoughts of ending her life. The temporary discharge of tension and anxiety afforded by shoplifting served to reinforce the appellant's compulsion to steal during her next bout of severe depression.

12 Dr Tan opined that the appellant's case was uncommon. She stole not for gain or pleasure, but due to her inability to resist the impulse to steal objects, including non-essential items or items of little monetary value, despite knowing that shoplifting was irrational, illegal and irresponsible.

13 Dr Tan explained that the appellant's kleptomania was a mental disorder that required regular therapy and medication, which would help to significantly reduce the tension and anxiety, and control the impulse to steal. He stated that the appellant had defaulted on follow-up treatment and medication from 18 January 2005 as she felt she was "better" and "able to control her impulses". She also felt bad and embarrassed to admit she needed psychiatric help and medication. However, the appellant consequently suffered a relapse and committed six shoplifting offences between 27 April 2005 and 16 May 2005.

14 Dr Tan nevertheless affirmed the appellant's awareness of, and willingness to adhere to, the course of treatment she needed, and indicated that the appellant had started taking Prozac daily again. Dr Tan emphasised that a custodial sentence would be unsuitable for the appellant as it would aggravate her condition, worsen the prognosis for her recovery, and further nullify all that was

currently being done to help her recover.

The mitigation plea

15 The appellant's father passed away in 1998 when she was 17 and she lives with her mother, aged 62, in a flat in Ang Mo Kio. Her elder sister, who is married, lives close by. Her boyfriend, with whom she has a steady relationship, is working in the US, having completed his studies there. Her family as well as her boyfriend's parents, who are established medical practitioners, are close to and fully supportive of her.

16 Mr Gwee submitted in mitigation that the appellant pleaded guilty at the first opportunity and had no past convictions. She was penitent and had been co-operative in investigations. All items stolen were also recovered.

17 Mr Gwee stated that the appellant had performed well at school and was active in student activities and social work. She had studied Computer Engineering at the Nanyang Technological University ("NTU") and graduated with a Bachelor of Engineering degree with Merit in July 2004. She was the business manager of the Computer Engineering Club ("the Club") at NTU. A testimonial from Asst Prof Yow Kin Choong, the Sub-Dean of NTU's School of Computer Engineering and an adviser to the Club, described the appellant as an always helpful, "highly motivated individual" who was "an active member of the University and has participated as an office bearer in several hostel and school activities". Asst Prof Yow further wrote that, as the business manager of the Club, the appellant "had to handle considerable sums of sponsorship money and she had proven herself to be an honest and trustworthy person". In September 2004, the appellant started work as a software engineer at Singapore Airlines, which confirmed her employment in May 2005. She tendered her resignation on 11 July 2005 after being arrested for her offences earlier this year.

18 As regards the shoplifting offences, Mr Gwee reiterated that the appellant did not steal for gain or for pleasure. She could afford the items she stole and had no real use for most of them. The offences were committed as she suffered a relapse after she stopped taking her medication in mid-January 2005 when she felt confident enough to try to control her impulsive tendencies. The thefts were not premeditated and erratic, particularly those committed on 16 May 2005, two days before she was expected to depart on a trip to the US with her boyfriend's family to attend his graduation.

19 Mr Gwee maintained that a custodial sentence would not serve to rehabilitate her or deter her from re-offending in future, but would in fact destroy her and altogether scupper any future efforts by her psychiatrist, Dr Tan, to help her recover.

The decision below

20 In sentencing the appellant, the district judge considered the fact that the appellant had pleaded guilty in the first instance and had no previous convictions. The district judge also considered that the appellant's offences resulted from her kleptomaniacal impulse. However, he relied on the case of *Siauw Yin Hee v PP* [1995] 1 SLR 514 at 516, [9] where I had stated that:

> If our criminal law is to have any protective ambit over the lives of ordinary citizens, persons such as the appellant cannot be allowed to deal with their personal problems by giving vent to their kleptomaniac tendencies with abandon; or indeed, by resorting to any other form of crime.

The district court in that case imposed a sentence of six months' imprisonment on the appellant, who had pleaded guilty to a charge of shoplifting under s 380 of the Penal Code, upon being informed that

the appellant had a record of eight similar convictions for offences committed in the past eight years. The appellant in that case had a history of depressive illness which created in him an "urge to shoplift", and had been receiving treatment and counselling (although not continuously) since his fourth conviction for shoplifting. On appeal before me, the appellant argued for a conditional discharge, with a requirement that he receive medical treatment for the next three years. However, I was of the view that his rehabilitative prospects were dim, given his subsequent repeated convictions which, in my opinion, evinced a lack of effort on his part to exercise self-restraint over his recurring impulse to steal or to even seek more extensive counselling and treatment. I therefore saw fit to dismiss the appeal.

21 The district judge in the present case considered that the appellant was aware of her kleptomaniacal condition and had sought assistance by seeing Dr Tan in September 2004 but defaulted in her follow-up treatment and medication since January 2005, which resulted in the series of shoplifting offences between 27 April 2005 and 16 May 2005. He opined that the appellant ought to have known that, unless she continued with her treatment and medication, she would give way to her impulse to steal when anxious and distressed. He further opined that it would have dawned on the appellant to seek help from Dr Tan after her offence of 27 April 2005, or even after her two offences of 12 May 2005, but she had failed to do so.

22 The district judge also considered the case of *Ng So Kuen Connie v PP* [2003] 3 SLR 178 where I discounted the element of deterrence in sentencing in view of the appellant's mental disorder. I noted that the existence of a mental disorder is always a relevant factor in the sentencing process. The district judge went on to note that the impact of a mental disorder on the determination of the appropriate sentence to be imposed would depend on the circumstances of each case. However, the district judge found that there was no significant reduction in the element of deterrence in the appellant's case as she was well aware of her acts and was able to appreciate the gravity of the offence, and had moreover committed the offences six times on three different occasions.

23 The district judge concluded that probation or a fine would not be appropriate in the circumstances of the case and imposed on the appellant a custodial sentence of two and a half months for each of the two charges proceeded with, ordering the sentences to run concurrently.

The appeal

24 The appeal first came before me on 4 October 2005. Mr Gwee disagreed with the findings of the district judge and contended that he had failed to take into account, *inter alia*, the seriousness of the appellant's mental disorder, the fact that the offences were committed as a result of her disorder, her prospects of rehabilitation and the impact that a custodial sentence would have on her. He submitted that the sentence of two and a half months' imprisonment was manifestly excessive having regard to the circumstances of the case and should be varied to one of probation.

25 Section 5(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("POA") provides:

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

or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order if the person —

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

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

26 The Prosecution protested that the appellant, being 24 years of age, had passed the threshold age of 21 where the courts would normally consider calling for a probation report. Indeed, the judicial practice has been to require a probation report before sentencing a young offender: *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [22]. However, the appellant was clearly not ineligible for probation under s 5(1) of the POA. The appellant did not fall within the proviso to s 5(1) of the POA as there is no minimum sentence prescribed by s 380 of the Penal Code, which provides that the offender "shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine" (see *Juma'at bin Samad v PP* [1993] 3 SLR 338 at 348–349, [41]).

27 The aim of probation is to secure the rehabilitation of offenders, and in *PP v Mok Ping Wuen Maurice* at [21], I noted that "[r]ehabilitation is the dominant consideration where the offender is 21 years and below" as it is recognised that the "chances of reforming [young offenders] into law-abiding adults are better". I further opined in *PP v Muhammad Nuzaihan bin Kamal Luddin* [2000] 1 SLR 34 at [16]:

> In the case of youthful criminals, the chances of effective rehabilitation are greater than in the case of adults, making the possible use of probation more relevant where young offenders are concerned. … [P]robation is never granted as of right, even in the case of juvenile offenders. In deciding whether or not probation is the appropriate sentence in each case, the court still has to take into account all the circumstances of the case, including the nature of the offence and the character of the offender.

28 Evidently, the age of an offender is often indicative of the effectiveness of probation in bringing about rehabilitation. However, this does not lead to the inexorable conclusion that rehabilitation can never be the operative concern in the case of an offender above the age of 21, particularly if he or she demonstrates an extremely strong propensity for reform and/or there are exceptional circumstances warranting the grant of probation. The offender's age, therefore, is by no means absolutely determinative of the appropriate sentence as the court must still examine the facts in the individual case. Probation may not be ultimately viable even in the case of a young offender; if the circumstances are such that the probation will not afford the offender in question a realistic opportunity to rehabilitate his or her life, then a prison sentence will be more appropriate: *Wu Si Yuan v PP* [2003] SGHC 7 at [9].

29 The rehabilitation of the offender could also take precedence where other sentencing considerations such as deterrence are rendered less effective, as might be the case for an offender belabouring under a serious psychiatric condition or mental disorder at the time of the incident: see, *eg*, *Ng So Kuen Connie v PP* ([22] *supra*). The appellant in that case was convicted under s 336 of the Penal Code for committing an act "so rashly … as to endanger human life" by throwing 25 items from her condominium apartment. The appellant had been suffering from hypomania, commonly known as a nervous breakdown, at the time of the offence. I set aside the sentence of two months' imprisonment on appeal and substituted it with the maximum fine of $250. While I was cognisant that a custodial sentence was normally meted out to persons convicted under the "rash" limb of s 336, I

found that the aims of general deterrence would not be served by imposing such a sentence on the appellant on the unique facts of that case. I endorsed the approach of Martin J in *R v Wiskich* [2000] SASC 64 (a decision of the Supreme Court of South Australia) at [62]:

> An assessment of the severity of the disorder is required. A sentencing court must determine the impact of the disorder upon both the offender's thought processes and the capacity of the offender to appreciate the gravity and significance of the criminal conduct. … *It is not difficult to understand that the element of general deterrence can readily be given considerably less weight in the case of an offender suffering from a significant mental disorder who commits a minor crime, particularly if a causal relationship exists between the mental disorder and the commission of such an offence.* In some circumstances, however, the mental disorder may not be serious or causally related to the commission of the crime, and the circumstances of the crime so grave, that very little weight in mitigation can be given to the existence of the mental disorder and full weight must be afforded to the element of general deterrence. In between those extremes, an infinite variety of circumstances will arise in which competing considerations must be balanced. [emphasis added]

I went on to make the following observations in *Ng So Kuen Connie v PP* at [58]:

> I found that (as Martin J rightly pointed out) the element of general deterrence can and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence. This is particularly so if there is a causal link between the mental disorder and the commission of the offence. In addition to the need for a causal link, other factors such as the seriousness of the mental condition, the likelihood of the appellant repeating the offence and the severity of the crime, are factors which have to be taken into account by the sentencing judge. In my view, general deterrence will not be enhanced by meting out an imprisonment term to a patient suffering from a serious mental disorder which led to the commission of the offence.

30 I found the above observations pertinent to the present case where the appellant was concerned. The medical evidence was that the appellant's urge to steal was pathological and that she was unable to control that urge when overcome by bouts of anxiety and depression. The medical evidence further indicated that punishment by incarceration would not only be abortive but would in fact destroy the appellant. In the premises, I was not inclined to dismiss the appeal without first exercising my discretion to call for a report, so as to be fully apprised of the suitability of probation as a sentencing option for the appellant.

31 The Prosecution was opposed to the possibility of probation for the appellant and advocated the imposition of a custodial sentence on the basis that she had already been given too many chances. The Prosecution asserted that the appellant should be placed in the regimented environment of the prison, even if only to instil in her the discipline to take her medication every day. It appeared to me that, to a palpable extent, what the appellant really needed was to take her medication daily so as to subdue the incidence of anxiety and depression leading to her compulsion to shoplift. I thus further directed the Prosecution to inquire into whether and how the appellant would be certain to receive the requisite supervision in prison to ensure that she took her daily dose of medication, and adjourned the appeal pending the preparation of the probation report.

32 At or about 5.00pm on 15 October 2005, when the probation report was still pending, the appellant was again arrested for theft of four pairs of earrings from the Isetan Departmental Store at Wisma Atria. She claimed she had forgotten to take her medication that day. This latest offence was taken into account by Mrs Foo-Lim Jim Jim ("Mrs Foo-Lim"), a senior probation officer who conducted

the social investigation and prepared the appellant's probation report.

The probation report

33 The probation report by Mrs Foo-Lim was detailed and comprehensive. Mrs Foo-Lim had interviewed the appellant on several occasions, and had also interviewed members of her immediate and extended family, her boyfriend's parents, Dr Tan, and her counsellor, Mrs Lam-Khong Seet Mui ("Mrs Lam-Khong"). Mrs Foo-Lim had also enclosed two reports by Dr Tan dated 10 October 2005 and 2 November 2005 and a report by Dr Goh dated 1 November 2005. These reports and interviews, as reflected in Mrs Foo-Lim's written assessment, concertedly indicated the appellant's need for and responsiveness to treatment, as well as the commitment on the part of the appellant and those around her to achieving her recovery and rehabilitation.

34 Mrs Foo-Lim observed in the probation report that the appellant was forthcoming and co-operative during investigations and readily admitted to her wrongdoings. The appellant hoped to be given a chance and was willing to undergo probation. She had abided by a trial curfew from 9.00pm to 6.00am during the investigation period.

35 The appellant attributed her offences to her inability to fight her "urges". She acknowledged that she felt a sense of accomplishment when she was able to shoplift without getting caught. Although she was aware of her medical condition, she had difficulty accepting it initially and was keen to be off medication so as to be considered "more normal". She kept her arrest on 27 April 2005 to herself and was bailed out by an ex-primary schoolmate. She resumed taking her medication but did so irregularly. When she was arrested on 12 May 2005, she again kept it from everyone except a church friend who bailed her out. Her mother was not aware of her stealing habit until recently as she did not want her mother to worry about her.

36 The appellant was now seeing Dr Tan on a daily basis, and she had been receiving counselling under Mrs Lam-Khong, a registered counsellor with the Singapore Association of Counsellors. Mrs Lam-Khong had taught the appellant some strategies to manage her "urges". Mrs Lam-Khong reported that the appellant was generally responsive and had learnt to be more aware of her "urges".

37 Mrs Foo-Lim stated that appellant was also aware of the need to take her medication daily. However, she would still occasionally forget to take her medication at home, and would then take her medication at Dr Tan's clinic. She would feel the "urges" even while on medication, although she was better able to fight them with the strategies she had been taught. She admitted to having stolen while on medication between June 2005 and October 2005, when she took newspapers from a 7-Eleven store while on her way to Dr Tan's clinic. She claimed, however, that she had forgotten to take her medication on 15 October 2005 when she was arrested for stealing four pairs of earrings from the Isetan Departmental Store at Wisma Atria.

38 The probation report confirmed Dr Goh and Dr Tan's assessment that the appellant required long-term treatment and medication to address her offending behaviour. She had resumed taking Prozac daily, and had also been prescribed Lexotan (bromazepam) to counter the state of "anxiety" induced by the use of Prozac. The medication alleviated the appellant's tension and enabled her to resist her "urges" to a certain extent. However, medication alone was insufficient to curb her impulse to steal when the "urges" were great, as evinced by the one occasion when the appellant had stolen newspapers from 7-Eleven store despite being on medication. The appellant's risk of re-offending was high. Her initial struggle to accept her condition, take her medication regularly and resist the temptation to steal contributed to the commission of the recent offence of 15 October 2005.

39 However, Mrs Foo-Lim considered the support the appellant received from those around her and her own resolve now to deal with her condition to be strong positive factors. Her family and her boyfriend's parents were close to and concerned about her. The appellant's latest arrest on 15 October 2005 finally made her family realise the seriousness of her condition and the extent of support she needed to overcome the challenge she faced.

40 Her family members met with her boyfriend's parents, who also expressed their willingness to help. Her family, aunt and uncle and her boyfriend's parents all pledged to play an active role in her rehabilitation, and mobilised their resources to ensure that the appellant remained closely supervised at all times, including during her trips to shops or stores. A 24-hour supervision plan (at Annex 4 of the probation report) was instituted to chaperone the appellant while she recovers from her condition and has been operative since 24 October 2005. The appellant's sister expressed her willingness to be the main co-ordinator of all the supervision arrangements, and was willing to execute a bond if required by the court under s 10(1) of the POA.

The supervision plan

41 Under the supervision plan, the appellant's mother ensures the appellant takes her medication at 7.00am daily. From Monday to Saturday at 8.00am, the appellant's sister walks her from her home to the Ang Mo Kio Mass Rapid Transit station, where one of the nurses at Dr Tan's clinic who lives at Hougang meets her and accompanies her on the journey to Dr Tan's clinic at the Mt Elizabeth Medical Centre. The appellant is supervised from 9.00am to 5.00pm (9.00am to 1.00pm on Saturday) by the nurses (there are four) at Dr Tan's clinic where she helps with some administrative work. Her boyfriend's father, whose clinic is also located at the Mt Elizabeth Medical Centre, sends her home thereafter. The appellant then remains at home and under the supervision of her mother until the next morning. On Sundays at 8.00am, the appellant's mother, aunt and uncle bring her to church, where they attend the church service together and take her home afterwards at 1.00pm. Her mother again supervises her at home until the next morning.

42 The appellant's mother, sister and/or brother-in-law will provide any necessary back-up for all scheduled activities. In the event of any change to the supervision plan, the appellant will be accompanied at all times by at least one of the parties mentioned therein. All the parties concerned confirmed that they understood their respective duties and undertook to fulfil their responsibilities.

The probation report's recommendation

43 Mrs Foo-Lim considered that in order for probation to be viable and to reduce the appellant's risk of re-offending, the appellant needed to (a) be responsible in taking her medication daily under supervision by her mother, with whom she stays; (b) undergo regular psychiatric and psychological counselling; and (c) receive very close supervision from her family and significant persons in her life.

44 In view of the appellant's commitment and the co-ordinated efforts by her various caregivers to ensure that she takes her medication daily, receives therapy and remains supervised at all times, Mrs Foo-Lim recommended that the appellant be placed on a 24-month probation with appropriate conditions attached.

The court's assessment

45 In assessing the appropriateness of probation for the appellant, I carefully considered the facts and recommendations set out in the report and the parties' submissions.

46 As a general rule, probation is deemed inappropriate in cases where serious offences such as robbery or other violent crimes have been committed (see, *eg*, *PP v Mok Ping Wuen Maurice* ([26] *supra* at [22]), or where the offender has prior antecedents, as in the case of *Siauw Yin Hee v PP* ([20] *supra*). I regarded the appellant's offences with considerable severity. I noted that a mandatory imprisonment term was prescribed for offences of theft in dwelling under s 380 of the Penal Code. Although it was not unheard of for probation to be ordered on appeal in lieu of imprisonment for such offences (see *Lee Kok Thong v PP* Magistrate's Appeal No 197 of 1991, cited in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at p 363), I was cognisant of the fact that the appellant had re-offended while on bail as well as pending the probation report in respect of which I had adjourned her appeal. Further, while the appellant had no antecedents, she had admitted to having stolen on more than 40 occasions since she was nine years old. The appellant had been extremely foolish in not adhering to her prescribed prescription and medication, thinking she could control her impulsive tendencies on her own. The circumstances under which she had re-offended could not be lightly condoned.

47 Moreover, even where probation has been recommended, the court may on its own assessment ultimately determine that probation would be inappropriate in the circumstances of the case. In *Wu Si Yuan v PP* ([28] *supra*), the 17-year-old appellant had been charged with an offence of consumption of Ecstasy, a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2001 Rev Ed), and sentenced to 12 months' imprisonment. She appealed to have her sentence of imprisonment varied to one of probation. Pursuant to my request for a probation report, the probation officer recommended a period of 24 months' probation coupled with a 12-month stint at a residential institution such as the Andrew and Grace Home. I nevertheless found probation to be an unsatisfactory option. The probation officer herself took the view that the probation prospects were not encouraging, mainly due to the constant friction between the appellant's parents, who were either ineffectively involved or unable to exert any parental authority over the appellant. The recommended alternative environment of the residential home was merely a temporary refuge with no apparent focus on, or programme designed to achieve, the rehabilitation of offenders. Further, the programme was not tailored towards providing the requisite level of supervision and vigilance. I therefore declined to accept the recommendation of the probation report and dismissed the appeal.

48 The circumstances of the present case, however, were evidently different. The probation report exhibited a meticulously crafted supervision plan to ensure that the appellant took her medication daily and remained constantly supervised. The supervision plan, which was effected on 24 October 2005, had been promptly initiated by the appellant's family and other caregivers following her latest offence of 15 October 2005. Although the probation report was ready by 4 November 2005, I found it significant that the probation report and the recommendations therein had been intentionally kept from release to the parties until a day before the hearing of the appeal. By the time the parties came before me again on 15 November 2005, the supervision plan had been operative for three weeks. The appellant attested that she had been compliant in taking her medication at home every morning.

49 The appellant has an exceptional support system borne out of the concerted effort on the part of several dedicated individuals to achieve her recovery and rehabilitation. I was impressed by the commitment and resolve of the appellant's family and her caregivers to look after her and ensure her adherence to the supervision plan. Their optimism and concern were no doubt significant contributing factors to the appellant's motivation and determination to recover and turn over a new leaf. A strong and committed family unit which is ready and willing to take a leading role in the rehabilitation of an offender is crucial to the success of such rehabilitative attempts as probation: *Wu Si Yuan v PP* at [15].

50 I noted that the appellant had been a good student both academically and in terms of her conduct at school. I noted further that the appellant had displayed tangible progress in her rehabilitation. According to the probation report, after leaving Singapore Airlines in July 2005, the appellant has been helping with some administrative work at Dr Tan's clinic for which she receives a nominal sum of about $350 per month. Dr Tan has also involved the appellant in providing technical support for the lectures he delivers. Dr Tan expressed that the appellant's condition, which stems partly from her poor self-esteem, would improve if she was employed, and suggested possible employment options for the appellant should she be placed on probation. In the meantime, the appellant continues to receive psychotherapy and behavioural therapy under Dr Tan.

51 In my assessment, the extensive and multi-faceted approach taken towards the appellant's recovery and reform indicated that her rehabilitative prospects were premised not on mere prognostication or unfounded optimism, but on realistic and practical considerations. As long as the appellant remained faithful in taking her daily dose of medication, her prognosis for complete recovery was positive.

52 Before me, the Prosecution continued to press for the imposition of a custodial sentence. Pursuant to my earlier direction, I enquired if any satisfactory assurance had been obtained that the appellant would, at the very least, be administered her medication in prison daily, but none was forthcoming. I found it disappointing that no attempt appeared to have been made by the Prosecution to procure such an assurance. The appellant's daily medication was the most fundamental aspect of the treatment for her condition so as to curtail her shoplifting impulses.

53 In any event, it was clear to me that bundling the appellant off to prison, while an apparently convenient and instant panacea, was no solution to her problem. Incarceration would not serve to deter the appellant, whose offences were a manifestation of her mental affliction. It would instead exacerbate her condition and estrange her from the persons crucial to her rehabilitative progress. It would destroy the very last hope for her recovery.

54 Assuming on the other hand that the objective of incarceration was simply to put the appellant away so that she could not shoplift, then an imprisonment term of two and a half months was hardly adequate. What would become of the appellant upon her release, given that the prognosis of her condition would be significantly bleaker then than it presently is?

55 I was inclined to order that the appellant be placed on probation in view of the unique circumstances of the case. I was conscious that the recommendation for probation had not been made without reservation or qualification. Subjecting the appellant to probation with attendant conditions could not constitute an absolute guarantee against her re-offending.

56 Nevertheless, I was in the final analysis persuaded by the exceptional support and commitment on the part of the appellant's family and caregivers to secure the recovery and rehabilitation of the appellant. It was by virtue of such unflinching support that the essential conditions for the viability of the appellant's probation, namely daily medication, regular therapy and constant supervision, could be fulfilled. The positive indications towards reform displayed by the appellant were also undoubtedly attributable to the support she received.

57 The appellant, however, remains ultimately responsible for her own rehabilitation. I impressed upon her the need to adhere assiduously to the supervision plan and to take her medication daily. The consequences of default were assuredly grave. Any breach of her probation order or commission of a subsequent offence would, under s 5(4) of the POA, render her liable to be sentenced for her original

offences. Given those circumstances, the court will be left with little alternative but to abrogate the appellant's freedom of movement altogether by incarceration for as long as is required for the protection of both the public and the appellant.

The probation order

58 In the premises, I ordered that the appellant be placed on 24 months' supervised probation with the following conditions:

(a) The appellant is to perform 240 hours of community service;

(b) The appellant is to take her medication daily under supervision by her mother;

(c) The appellant is to attend regular psychiatric and psychological treatment sessions;

(d) The appellant is to comply with the supervision arrangement plan as approved by the probation officer; and

(e) The appellant's mother, Mdm Hey Ah Kiyau, and the appellant's sister, Mdm Goh Lee Ming, are to execute a bond of $10,000 to ensure her good behaviour.

Conclusion

59 In the course of these proceedings, it became patently clear to me that the courts are ill-equipped to deal with mentally afflicted offenders such as the appellant. The court was unfortunately saddled in this instance with having to choose between imprisonment and probation, neither of which represented a truly satisfactory or appropriate solution.

60 The appellant was singularly fortunate to have the kind of support she received. The sad truth is that, without the benefit of such support, the appellant could not even begin to perceive the possibility of probation. She would have been invariably sent to prison, despite the fact that incarceration was hardly a suitable punishment for someone of her mental constitution.

61 All offenders coming before the courts are dealt with within the confines of the law. If the courts are to properly adjudicate on cases where the offender suffers from some medical condition, the courts must be vested with the requisite sentencing discretion. Alternatively, it is to be greatly preferred if the Attorney-General's Chambers would, after proper verification, refer mentally ill or otherwise deficient offenders to the appropriate Ministry or government agency where such cases may be more fittingly administered.