IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 12

Magistrate's Appeal No 9133 of 2017

Between

LOGACHEV VLADISLAV

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

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

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark sentences]

Logachev Vladislav
v
Public Prosecutor

[2018] SGHC 12

High Court — Magistrate's Appeal No 9133 of 2017
Sundaresh Menon CJ
15 September; 6 October 2017

19 January 2018 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 The appellant, Logachev Vladislav ("the Appellant"), is a Russian who was 40 years old at the material time. He pleaded guilty to six charges of cheating at play, which is punishable under s 172A(2) of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("the CCA"). Section 172A of the CCA provides as follows:

> **Cheating at play**
>
> **172A.**—(1) A person shall not, in relation to the playing of any game in a casino, obtain or attempt to obtain any money or advantage for himself or any other person —
>
> (*a*) by a fraudulent trick, device, sleight of hand or representation;
>
> (*b*) by a fraudulent scheme or practice;

> (*c*) by the fraudulent use of gaming equipment or any other thing; or
>
> (*d*) by placing a bet in a game after the result of the game is known.
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 7 years or to both.
>
> (3) Any person who colludes with another person to do any act in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to be punished with the punishment provided for the offence under subsection (2).
>
> …

2 The Appellant was sentenced by the district judge ("the District Judge") to an aggregate term of 45 months' imprisonment. This appeal, Magistrate's Appeal No 9133 of 2017 ("MA 9133/2017"), is his appeal against the sentence imposed on him by the District Judge. The appeal is opposed by the respondent, the Public Prosecutor ("the Respondent"). As there has, to date, been no guidance from the High Court concerning sentencing for offences punishable under s 172A(2) of the CCA, this judgment proposes a framework to guide such sentencing.

The material facts

3 The Appellant was charged along with two of his accomplices: Skubnik Radoslav ("Skubnik"), a Czech who was 40 years old at the material time, and Egorov Andrei ("Egorov"), a Russian who was 33 years old at the material time.

Background

4 According to the statement of facts, which the Appellant admitted without qualification, the Appellant was part of a Russian syndicate operating

in casinos in the United States, Europe and Macau. The syndicate targeted slot machines made by certain manufacturers. Syndicate members would form teams comprising a "Master" (who was the team leader) and "Players". They would use smartphone devices to record the play patterns of the slot machines in question. The "Master" would then upload the recorded information to a server for analysis and decoding. The decoded data enabled the syndicate members to predict, with some degree of accuracy, the future outcomes of play on the targeted slot machines.

5 The decoded data would be sent to the "Master", who in turn would distribute this to the "Players". The "Players" would then return to the same slot machines, and the smartphone devices would alert them ahead of the next mass payout, thereby enabling them to win at those slot machines between 60 and 65% of the time.

6 In March 2016, the Appellant made arrangements for some syndicate members to travel to Singapore. These syndicate members proceeded to record the play patterns on specific slot machines at the casinos at Marina Bay Sands ("MBS") and Resorts World Sentosa ("RWS"). These recordings were then analysed, and the analysed data was given to the Appellant while he was in Russia.

7 The Appellant taught Skubnik and Egorov how to use the smartphone devices. In April 2016, the Appellant instructed Skubnik to go to Singapore with the smartphone devices and use them in the casinos here. He also told Skubnik that he would be travelling to Singapore for this job. Separately, he informed Egorov of the same.

8 The trio arrived in Singapore on 5 May 2016. The Appellant was the "Master" for this job. He provided Skubnik and Egorov with the analysed data (which was stored in a computer). Together, they visited the casinos at MBS and RWS and identified the compromised slot machines. They then used the smartphone devices and gained an advantage when playing at these slot machines. In accordance with their agreement, Skubnik and Egorov would each receive about 10% of the winnings, while the Appellant would receive about 15 to 20%. The balance would go to the syndicate.

9 On 7 May 2016, between 8.18pm and 11.11pm, the Appellant used the smartphone devices to gain an advantage while playing at the compromised slot machines at the casino at MBS and won $30,959.90 in this way. This gave rise to a charge under s 172A(1)(*c*) and punishable under s 172A(2) of the CCA (namely, District Arrest Case No ("DAC") 919377/2016), which the Appellant pleaded guilty to.

10 The other five charges to which the Appellant pleaded guilty were charges under s 172A(1)(*c*) read with s 172A(3) and punishable under s 172A(2) of the CCA. These involved the Appellant *colluding* with either Skubnik or Egorov to cheat at play. For these charges, either Skubnik or Egorov would use the smartphone devices to gain an advantage while playing at the compromised slot machines in the casinos at MBS and RWS. The details of these charges are as follows:

SN	Charge	Date / Time / Location	Accomplice	Amount cheated
1	DAC 919379/2016	5 May 2016 7.17pm to 11.16pm RWS	Skubnik	$6,401.70

SN	Charge	Date / Time / Location	Accomplice	Amount cheated
2	DAC 919380/2016	6 May 2016, 7.33pm to 7 May 2016, 1.42am RWS	Skubnik	$13,551.58
3	DAC 919385/2016	8 May 2016 2.12am to 6.27am RWS	Egorov	$18,982.50
4	DAC 919392/2016	6 May 2016 4.23am to 5.54am MBS	Egorov	$14,573.00
5	DAC 919395/2016	7 May 2016 2.42am to 6.13am MBS	Egorov	$21,774.45

The proceedings below: Skubnik

11 Skubnik was the first to be dealt with. He pleaded guilty before another district judge on 28 June 2016 to three charges under s 172A(1)(*c*) and punishable under s 172A(2) of the CCA. Two similar charges and one charge under s 7(1)(*a*) of the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 2013 Rev Ed) were taken into consideration for sentencing purposes. On the same day, Skubnik was sentenced as follows:

SN	Charge	Amount cheated	Sentence
1	DAC 917781/2016	$6,401.70	10 months' imprisonment
2	DAC 919292/2016	$13,551.58	12 months' imprisonment
3	DAC 919293/2016	- $782.70	6 months' imprisonment
Sentences in DAC 917781/2016 and DAC 919292/2016 to run consecutively Aggregate sentence: 22 months' imprisonment			

The proceedings below: The Appellant and Egorov

12 The Appellant and Egorov pleaded guilty before the District Judge on 24 March 2017. Egorov pleaded guilty to three charges under s 172A(1)(*c*) and punishable under s 172A(2) of the CCA. Seven similar charges were taken into consideration for sentencing purposes. On 12 April 2017, the District Judge sentenced Egorov as follows:

SN	Charge	Amount cheated	Sentence
1	DAC 919303/2016	$18,982.50	15 months' imprisonment
2	DAC 919310/2016	$14,573.00	12 months' imprisonment
3	DAC 919313/2016	$21,774.45	18 months' imprisonment
Sentences in DAC 919310/2016 and DAC 919313/2016 to run consecutively Aggregate sentence: 30 months' imprisonment			

13 As for the Appellant, as mentioned earlier, he pleaded guilty to one charge under s 172A(1)(*c*) of the CCA and five charges under s 172A(1)(*c*) read with s 172A(3) of the CCA, all of which were punishable under s 172A(2) of the CCA (see the facts giving rise to these charges at [9]–[10] above). Ten charges under s 172A(1)(*c*) read with s 172A(3) and punishable under s 172A(2) of the CCA were taken into consideration for sentencing purposes. On 12 April 2017, the District Judge sentenced the Appellant as follows:

SN	Charge	Amount cheated	Sentence
1	DAC 919377/2016	$30,959.90	24 months' imprisonment
2	DAC 919379/2016	$6,401.70	12 months' imprisonment
3	DAC 919380/2016	$13,551.58	15 months' imprisonment
4	DAC 919385/2016	$18,982.50	18 months' imprisonment
5	DAC 919392/2016	$14,573.00	15 months' imprisonment
6	DAC 919395/2016	$21,774.45	21 months' imprisonment

Sentences in DAC 919377/2016 and DAC 919395/2016 to run consecutively
Aggregate sentence: 45 months' imprisonment

14 The District Judge issued the written grounds for her decision on 18 May 2017 (see *Public Prosecutor v Egorov Andrei and Logachev Vladislav* [2017] SGDC 141 ("the GD")).

15 The District Judge held that since the Appellant, Skubnik and Egorov were participants in a common criminal enterprise, the parity principle would apply if they were "equally placed in terms of culpability". However, as it was accepted that the Appellant was more culpable than Skubnik and Egorov, the District Judge thought that a "suitable uplift" in the Appellant's sentence, relative to the sentences meted out to his two accomplices, was called for (see the GD at [20]).

16 As between Skubnik and Egorov, the District Judge held that their roles were "identical", and that the main difference lay in: (a) the number of charges each of them faced; and (b) the amount each of them cheated. With respect to the number of charges each of them faced, the District Judge noted that this was a function of the number of times each of them entered the casino at either MBS or RWS and played at the compromised slot machines there. She therefore thought that this was not the critical differentiating factor between them. Rather, she considered that the second factor – the amount cheated – presented the critical difference between Skubnik and Egorov. In this respect, the amount cheated by Egorov was more than double the amount cheated by Skubnik. The District Judge found this significant because the amount cheated "represented the harm caused by the offences". Furthermore, since each accomplice's percentage share was derived from the amount cheated, Egorov stood to benefit more. Accordingly, the District Judge considered that Egorov ought to receive

a higher sentence than Skubnik, and held that an appropriate difference was eight months' imprisonment (see the GD at [21]).

17 The District Judge considered the present case to be more aggravated than *Public Prosecutor v Apinyowichian Yongyut and others* [2016] SGDC 200 ("*Yongyut*"), which was relied on by the Appellant and Egorov, even though that case involved a larger amount cheated. She held that the present case "involved our casinos falling victim to a high tech and organised global syndicate", and that "[t]he sophistication and complexity [lay] in the analysis and decoding of the data to recognise the winning play outcomes" (see the GD at [26]). She considered the fact that the Appellant and Egorov had operated as part of an organised criminal syndicate to be an aggravating factor. In her view, the fact that no losses were, in the event, actually sustained by the casinos (because the amount cheated was recovered by the authorities) was not a compelling consideration due to the "overriding public interest" (see the GD at [27]).

18 The District Judge did consider the Appellant's and Egorov's pleas of guilt and their cooperation with the authorities to be mitigating (see the GD at [28]). However, she did not place any weight on the Appellant's claims that he had committed the offences due to threats and harassment from one "Igor" (the head of the syndicate) and the syndicate (see the GD at [29]–[30]).

The Appellant's and Egorov's appeals to the High Court

19 As noted at the outset, MA 9133/2017 is the Appellant's appeal against the sentence imposed on him by the District Judge. This was fixed for hearing before this court on 15 September 2017 together with Magistrate's Appeal No 9132 of 2017 ("MA 9132/2017"), which was Egorov's appeal against his sentence. However, Egorov applied to withdraw MA 9132/2017 at the hearing.

I granted him leave to do so after drawing his attention, through his counsel, to the fact that if the Appellant's appeal in MA 9133/2017 were successful, it might strengthen the prospects of his own appeal in MA 9132/2017. Egorov noted this, but was clear that he did not wish to maintain his appeal. As for Skubnik, he did not appeal against his sentence and had finished serving his sentence by the time of the hearing. In the circumstances, only MA 9133/2017 remains outstanding.

The parties' submissions before this court

20 The parties first filed written submissions on 5 September 2017. The Appellant submitted that an aggregate sentence of not more than 24 months' imprisonment would be appropriate in this case. In this regard, he made the following broad points:

(a) The District Judge erred in placing undue weight on the parity principle and taking reference from the sentence imposed on Skubnik when that sentence was manifestly excessive to begin with.

(b) In particular, the district judge who sentenced Skubnik had not had the benefit of being referred to the relevant sentencing precedents. Furthermore, the material facts and relevant sentencing considerations had not been fully canvassed by Skubnik, who had been unrepresented. Having regard to the sentences meted out in other casino cheating cases prosecuted under s 172A of the CCA (namely, *Public Prosecutor v Lim Boon Kwang and Leow Pui Kee* [2014] SGDC 3 ("*Lim Boon Kwang*") and *Yongyut*), the sentence imposed on Skubnik was manifestly excessive.

(c) The sentence meted out to the Appellant was also inconsistent with the relevant sentencing precedents, which included: (i) analogous casino cheating cases prosecuted under s 172A of the CCA (namely, *Yongyut*, *Lim Boon Kwang* and the sentences imposed on the other offenders involved in the cheating scheme in *Lim Boon Kwang*); (ii) casino cheating cases prosecuted under ss 417 and 420 of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC"); and (iii) general cheating cases prosecuted under s 420 of either the PC or its predecessor version, the Penal Code (Cap 224, 1985 Rev Ed) ("the 1985 PC").

(d) The District Judge erred in placing undue weight on the transnational involvement of a global organised criminal syndicate. She overemphasised general deterrence and the public interest, and failed to accord sufficient weight to the fact that the amount cheated had been fully recovered and that, as it turned out, the casinos in fact suffered no loss. Furthermore, she erroneously attributed the acts of other syndicate members to the Appellant, and failed to properly assess each individual's role and involvement within the syndicate.

(e) The District Judge failed to accord any or sufficient weight to significant mitigating factors, namely: (i) the Appellant's plea of guilt; (ii) the Appellant's cooperation with the authorities; and (iii) the fact that the Appellant's actions were borne out of a genuine fear of the repercussions of not complying with the instructions of "Igor".

(f) The aggregate sentence of 45 months' imprisonment was manifestly excessive in all the circumstances. In this regard, the District Judge also failed to give due consideration to the totality principle.

21 The Respondent, on the other hand, submitted that the sentence imposed by the District Judge was not manifestly excessive. It was argued that:

(a) The District Judge was correct in relying on Skubnik's sentence as the starting point for determining the Appellant's sentence, as well as in distinguishing *Yongyut* given the different factual matrix.

(b) The District Judge was correct in her assessment of the relevant aggravating factors, especially the Appellant's culpability relative to that of his two accomplices.

(c) The District Judge was correct in her assessment of the relevant mitigating factors.

22 The Appellant filed a written reply on 14 September 2017 addressing some of the points made by the Respondent. At the hearing on 15 September 2017, I invited the parties to file further submissions dealing with: (a) any case law or sentencing guidelines from other jurisdictions with provisions similar to s 172A of the CCA which had articulated the relevant sentencing considerations for the offence under this provision; and (b) any submissions that they might wish to make on a proposed sentencing framework. These further submissions were duly filed on 6 October 2017.

23 With respect to (a), both parties identified similar provisions from various foreign jurisdictions including New South Wales, Queensland and the Australian Capital Territory. However, both parties also highlighted that there was not much in the way of relevant case law dealing with these provisions. Ultimately, the survey of the applicable position in these other jurisdictions did not prove particularly fruitful.

24 As for (b), the Appellant proposed a three-step framework as follows:

(a) At the first step, the court would consider "the amount cheated as a result of the offence".

(b) At the second step, the court would determine the severity of the offence by considering: (i) the offender's culpability in committing the offence; and (ii) the harm resulting from the offender's actions. Culpability and harm could each be classified as being high, medium or low, depending on the presence of certain non-exhaustive circumstances.

(c) At the third step, the court would retain the discretion to calibrate the sentence by taking into account any relevant aggravating and mitigating factors.

25 The Appellant further submitted that where an offender faced multiple charges, the aggregate sentence must be calibrated to take due account of the totality principle. However, the Appellant stopped short of putting forth any suggested sentencing ranges. He submitted that it would be over-reaching to propose a range of sentences for the different bands of culpability and harm due to the dearth of sentencing precedents relating to s 172A of the CCA.

26 The Respondent, on the other hand, proposed a two-step framework based on the "multiple starting points" approach noted in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") (at [29]–[30]):

(a) At the first step, the amount gained or lost as a result of the offence would provide a good starting point for sentencing. In this

regard, the Respondent proposed the following sentencing bands based on the amount involved for a first-time offender who claimed trial:

Band	Amount involved	Sentencing range
1	Below $1,000.00	Fine or short custodial sentence
2	Up to $20,000.00	Imprisonment for up to 12 months
3	$20,000.00 to $250,000.00	Imprisonment for 12 to 36 months
4	$250,000.00 to $2,000,000.00	Imprisonment for 36 to 60 months
5	$2,000,000.00 and above	Imprisonment for 60 months upwards

(b) At the second step, the court would consider any necessary adjustments upwards or downwards based on the relevant sentencing considerations. These would include: (i) the nature of the cheating scheme, including whether the offence was carefully premeditated and planned, how sophisticated the scheme was and whether the scheme was difficult to detect; (ii) whether the scheme involved a criminal syndicate, and if so, whether the syndicate was transnational and whether it was of a large or a small size and scale; (iii) the offender's role, including whether there was any abuse of trust; (iv) whether there was any recovery or restitution of the amount cheated; and (v) other sentencing considerations including whether there was repeat offending or an early plea of guilt.

27 In addition, in cases involving multiple charges, the court would also have to consider which and how many sentences should be ordered to run consecutively. The court could also take into account the time which the offender had spent in remand by either backdating or discounting the sentence.

The sentencing precedents cited by the parties

28 It may be noted that each party sought, at least initially, to build its case primarily by relying on and distinguishing such sentencing precedents as were available.

29 The Appellant relied heavily on the decision in *Yongyut*. That case involved 14 foreigners who were charged under s 172A(1)(*b*) read with s 172A(3) and punishable under s 172A(2) of the CCA. Some of the accused persons were also charged under s 380 read with s 34 of the PC, and/or subsequently consented to charges under s 48C(1) and punishable under s 48C(2) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) being taken into consideration for sentencing purposes. The group had stolen a card carrier containing playing cards from the casino at MBS. They brought the card carrier to a hotel room and photographed the sequence of the cards before returning the card carrier. Their knowledge of the sequence of the cards gave them an advantage in the game when the card carrier was subsequently deployed. The amount cheated was $1,372,300.00, but it appears that there was some recovery and restitution. Thirteen offenders (the last accused had either died or absconded) were convicted after a trial, and their sentences for the CCA charges ranged between 15 and 18 months' imprisonment, although some account was eventually taken of the periods spent in remand.

30 The Appellant also relied on the decision in *Lim Boon Kwang*. There, two offenders ("Lim" and "Leow") were charged under s 172A(1)(*b*) read with s 172A(3) and punishable under s 172A(2) of the CCA. Lim pleaded guilty to three charges, with three further charges taken into consideration for sentencing purposes, while Leow pleaded guilty to one charge, with two further charges

taken into consideration for sentencing purposes. Three other offenders who were part of the group were dealt with separately. The group operated in this way. One of them ("Yeo"), who was employed as a dealer by the casino at MBS, would secretly view and memorise the sequence of the cards and then reveal this sequence to the other members of the group so that they could place bets on this basis. Lim and Leow were later additions to the group. A total of $216,695.00 was lost by the casino, but it appears that this sum was eventually restored by way of recovery and restitution. Lim cheated the casino of a total of $33,895.00 (on the basis of both the charges proceeded with and the charges taken into consideration for sentencing purposes) and was sentenced to an aggregate term of six months' imprisonment. Leow cheated the casino of a total of $33,850.00 (on the same basis) and was likewise sentenced to an aggregate term of six months' imprisonment. Both their appeals to the High Court (*Lim Boon Kwang v Public Prosecutor* Magistrate's Appeal No 312 of 2013 and *Leow Pui Kee v Public Prosecutor* Magistrate's Appeal No 313 of 2013 respectively) were dismissed without written grounds being issued. The sentences received by the other three offenders in *Lim Boon Kwang* are noted in *Yongyut* (at [191(i)]). Yeo was sentenced to an aggregate term of 22 months' imprisonment, while the other two offenders were sentenced to aggregate terms of 24 months' and 14 months' imprisonment respectively.

31 As against these precedents, the Respondent placed particular reliance on the sentence that was meted out to Skubnik.

32 Having considered the parties' respective contentions, I do not think any of the above cases provide any reliable reference points for me to determine the appropriate sentence to impose on the Appellant. I take this view for a number of reasons. First, written grounds were issued only in *Yongyut* and *Lim Boon Kwang*. However, in neither of these cases was there a satisfactory attempt at

situating the case along the sentencing continuum provided for under s 172A(2) of the CCA. Second, I note that in *Yongyut*, the court took reference from, among other things, the sentences meted out in casino cheating cases prosecuted under s 420 of the PC (see *Yongyut* at [192]–[194]), while in *Lim Boon Kwang*, the court took reference from the sentences meted out in "cheating" cases without expressly identifying those cases (see *Lim Boon Kwang* at [8]). With respect, I do not find this persuasive. Leaving aside the enigmatic reference to "cheating" cases in *Lim Boon Kwang*, the sentencing range under s 420 of the PC is markedly differently from that under s 172A(2) of the CCA. Section 420 of the PC states that an offender "shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine", whereas s 172A(2) of the CCA provides that an offender "shall be liable on conviction to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 7 years or to both". Consequently, I do not think a comparison with casino cheating cases prosecuted under s 420 of the PC is necessarily helpful. Third, the sentences imposed in the cases cited by the parties do not appear to sit comfortably with each other. In particular, the sentence imposed on Skubnik does seem, on its face, to be somewhat high when compared to the sentences imposed in *Yongyut* and *Lim Boon Kwang*.

33 For these reasons, the present appeal is not one that can be disposed of merely by looking at the sentences imposed in the available sentencing precedents. Rather, I consider it necessary to approach the matter from first principles. In this context, it is also necessary to consider where the present case lies along the sentencing continuum provided for under s 172A(2) of the CCA. In the remainder of this judgment, I will: (a) set out the relevant sentencing considerations that apply in the context of offences punishable under s 172A(2) of the CCA; (b) propose a sentencing framework for such offences; and (c) apply this sentencing framework to the present appeal.

The relevant sentencing considerations for offences punishable under s 172A(2) of the CCA

34 I first discuss the relevant sentencing considerations that apply in the context of offences punishable under s 172A(2) of the CCA. In *Terence Ng*, the Court of Appeal drew a distinction (at [39]) between *offence*-specific and *offender*-specific factors. The court explained that offence-specific factors were those which related to the manner and mode in which the offence was committed as well as the harm caused to the victim, whereas offender-specific factors were the aggravating and mitigating factors which were personal to the offender and which related to the offender's particular personal circumstances.

35 In *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 ("*Koh Thiam Huat*"), the High Court held (at [41]) that the two principal parameters which a sentencing court would generally have regard to in evaluating the seriousness of a crime were: (a) the *harm* caused by the offence; and (b) the offender's *culpability*. Harm was a measure of the injury caused to society by the commission of the offence, while culpability was a measure of the degree of relative blameworthiness disclosed by the offender's actions and was assessed chiefly in relation to the extent and manner of the offender's involvement in the criminal act. The court stated that *aside from* these two principal parameters, regard should also be had to *other aggravating and mitigating factors which did not directly relate to the commission of the offence*, such as the offender's remorse or his lack thereof.

36 Reading *Terence Ng* and *Koh Thiam Huat* together, it seems to me that offence-specific factors would comprise factors going towards: (a) the harm caused by the offence; and (b) the offender's culpability. These factors may be aggravating or mitigating, and different factors may apply depending on the particular offence in question. In comparison, offender-specific factors would

comprise other aggravating and mitigating factors which do not directly relate to the commission of the offence. These factors are generally applicable across all criminal offences.

37 Adopting this categorisation, I set out in the following table some of the relevant sentencing considerations that apply in the context of offences punishable under s 172A(2) of the CCA:

Offence-specific factors	
Factors going towards harm	Factors going towards culpability
(a) The amount cheated	(a) The degree of planning and premeditation
(b) Involvement of a syndicate	(b) The level of sophistication
(c) Involvement of a transnational element	(c) The duration of offending
	(d) The offender's role
	(e) Abuse of position and breach of trust
Offender-specific factors	
Aggravating factors	Mitigating factors
(a) Offences taken into consideration for sentencing purposes	(a) A guilty plea
(b) Relevant antecedents	(b) Voluntary restitution
(c) Evident lack of remorse	(c) Cooperation with the authorities

38 Two points should be noted about the above sentencing considerations. First, they are not intended to be exhaustive. This is especially so in the case of offender-specific factors, which, as I have noted, are generally applicable across the whole range of criminal offences (see [36] above). The offender-specific factors which I have set out above are merely those which are more common or more likely to present themselves in the context of offences punishable under s 172A(2) of the CCA. The entire gamut of offender-specific aggravating and mitigating factors in our criminal jurisprudence remain potentially relevant, and should be taken into account when they are present. Second, this categorisation of the relevant sentencing considerations is simply intended to provide a convenient framework for identifying and analysing such sentencing considerations as may arise. Not too much should be made of the labels that I have used, and the categories may not always be watertight. For instance, the degree of planning and premeditation and the level of sophistication, whilst categorised as offence-specific factors going towards the offender's culpability in the above table, may also relate to the harm caused by the offence in so far as they affect the likelihood of harm. With these caveats in mind, I now turn to elaborate on the aforesaid sentencing considerations.

Offence-specific factors

39 I look first at the offence-specific factors, beginning with those which go towards the harm caused by the offence.

Factors going towards the harm caused by the offence

(1) The amount cheated

40 It is axiomatic that the amount cheated must be taken into account as this represents at least a part of the harm caused to the casino. All other things

being equal, a higher amount cheated should lead to a higher sentence. The amount cheated was considered in *Lim Boon Kwang* (at [6]) and *Yongyut* (at, for instance, [191(i)(b)] and [191(ii)(d)]), and also by the District Judge (see the GD at [21]). Neither party disputes that the amount cheated is a relevant sentencing consideration. However, two aspects of this factor merit further discussion.

(A) THE RECOVERY BY THE AUTHORITIES OF ALL OR ANY PART OF THE AMOUNT CHEATED

41 The first relates to the weight that should be accorded to the recovery by the authorities of all or any part of the amount cheated. This is self-evidently not the same as voluntary restitution effected by the offender, which is discussed at [69] below. On one level, it could be argued that the recovery by the authorities of all or any part of the amount cheated means that no harm has been caused. In my judgment, however, little weight should be accorded to such recovery. In *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando*"), which concerned (among other things) credit card cheating offences prosecuted under s 420 of the 1985 PC, the High Court noted (at [49]) as follows:

> … In my view, *the fact that no or minimal loss has occurred because the offender has been apprehended or because the items or proceeds of crime are subsequently recovered is a* ***relevant but not decisive factor*** *in assessing the appropriate sentence.* The cogency of such a consideration will have to be evaluated in its proper matrix. Almost invariably in every case of commercial fraud, it cannot be gainsaid that a serious offence has indeed been committed. *That the loss has been minimised because of external intervention is* ***purely fortuitous****.* Apart from the actual amount involved in a credit card fraud, it should also be emphasised that a chain of parties is inevitably involved in every transaction. ***Damage or loss may sometimes be intangible*** *when it assumes the form of inconvenience, embarrassment, loss of reputation, time and costs expended in investigations as well as time, research, effort and costs involved in enhancing security measures.* ***Every credit card fraud,***

> ***regardless of whether the money or items are eventually recovered, would cause inconvenience and some form of intangible damage*** *to either the card holder or an involved financial institution.* General and specific deterrence must therefore feature as the vital if not dominant sentencing considerations for such offences. … [original emphasis omitted; emphasis added in italics and bold italics]

42 In my judgment, although the above comments were made in the context of the offence under s 420 of the 1985 PC, they apply with equal force to offences punishable under s 172A(2) of the CCA. The recovery by the authorities of all or any part of the amount cheated is an entirely fortuitous matter, and it is difficult to see why an offender should be given credit for effective action on the part of the authorities. The position might be different if, for instance, such recovery was made possible only by reason of the offender's assistance: where that is so, the offender's assistance might be taken to evidence remorse (see [70] below). Further, it seems to me that similar to the harm caused by credit card cheating offences, the harm caused by offences punishable under s 172A(2) of the CCA extends beyond the tangible financial loss suffered by the casino (see [45]–[46] below). Accordingly, while the recovery by the authorities of all or any part of the amount cheated might be a potentially relevant consideration in some circumstances, it should not, in the ordinary course of events, carry much weight.

(B) THE EMPHASIS TO BE PLACED ON THE AMOUNT CHEATED

43 The second aspect of the amount cheated that merits further discussion is the emphasis to be placed on that amount. This issue arises because in their respective proposed sentencing frameworks, both parties have suggested that the amount cheated should be the sole consideration at the first stage of the analysis (see [24(a)] and [26(a)] above). Indeed, in the Respondent's proposed sentencing framework, sentencing bands have been set out based on the amount

cheated (see [26(a)] above). As will become evident, I decline to single out the amount cheated in such a fashion in the sentencing framework that I propose below. Instead, I prefer to regard the amount cheated as one factor, albeit an important one, that goes towards the broader question of the harm caused by the offence. There are a number of reasons why I have taken this approach.

44 First, singling out the amount cheated has the potential to divert attention away from the other relevant sentencing considerations that go towards the *harm* caused by the offence punishable under s 172A(2) of the CCA. To the extent that the Respondent's proposed sentencing framework is based on the "multiple starting points" approach articulated by the Court of Appeal in *Terence Ng*, it is important to note that the court observed there (at [30]) that such an approach was suitable "where the offence in question is clearly targeted at a *particular* mischief which is measurable according to a single (usually quantitative) metric that assumes primacy in the sentencing analysis" [emphasis in original]. The Respondent submitted that s 172A of the CCA was clearly targeted at a particular mischief (namely, cheating at play in casinos) which was measurable by a single quantitative metric (namely, the amount cheated). It was further submitted that the underlying objective behind this offence was the "monetary gain at the expense of the casino".

45 I have no doubt that the offence punishable under s 172A(2) of the CCA is aimed at preventing casinos from being cheated. However, I am hesitant to conclude that this is the *particular* mischief that the offence is targeted at. At the second reading of the Casino Control (Amendment) Bill (Bill 28 of 2012), which introduced the provision that is now s 172A of the CCA, the Second Minister for Home Affairs, Mr S Iswaran, said as follows (see *Singapore Parliamentary Debates, Official Report* (15 November 2012) vol 89 at p 49):

> While the crime situation in the casinos has been under control, *we are mindful of the vulnerability of casinos to* ***criminal infiltration***. Therefore, the Home Team agencies continue to be vigilant and proactive in seeking to enhance our levers to prevent, detect and deal with casino-related crime. Clauses 94 to 98 amend sections 171 to 174 to create specific casino-related offences, such as those relating to counterfeit chips, cheating at play, collusion and unlawful interference with gaming equipment. *These amendments will make the CCA a more comprehensive piece of legislation to deal with* ***the range of crimes that commonly occur within casinos***. [emphasis added in italics and bold italics]

46 It can be surmised from this that the offence punishable under s 172A(2) of the CCA targets criminal activity in general in our casinos. In my judgment, this must involve consideration of more than just the amount cheated. Although both parties' proposed sentencing frameworks do take into account at a subsequent stage the other relevant sentencing considerations that go towards the harm caused by the offence, the danger, in my view, of an initial focus on the amount cheated is that this might eclipse or dilute the significance of those other considerations.

47 Second, singling out the amount cheated also has the potential to divert attention away from the relevant sentencing considerations that go towards the offender's *culpability*. In *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 ("*Tan Thian Earn*"), the High Court, in setting out a sentencing framework for offences under s 10A(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"), which proscribes the manufacture, supply, possession, import or export of any equipment, materials or substances which are useful for the manufacture of controlled drugs, rejected (at [33]) the approach suggested by the *amicus curiae*, which involved different indicative starting points pegged purely to the theoretical yield of the controlled substances in the offender's possession without regard to culpability. Under this approach, culpability was seen as a separate factor that might either enhance the sentence or reduce it from

the indicative starting point. The court instead favoured an approach under which *both* the harm caused and the offender's culpability would be considered in arriving at a sentencing range. Among other things, the court observed (at [35]) that offenders who committed offences under s 10A(1) of the MDA might do so in a variety of circumstances and for a variety of reasons, and stated (at [36]) that where these offences were concerned, "no sensible sentencing tariffs can be promulgated … which do not take the culpability of the individual offender into account". The court noted (likewise at [36]) that this differed somewhat from drug trafficking offences, where the range of scenarios was more restricted and therefore, the quantity of drugs involved (which was the primary determinant of harm) could provide a useful starting point for sentencing. This aspect of *Tan Thian Earn* was recently followed by the High Court in *Liew Zheng Yang v Public Prosecutor* [2017] 5 SLR 1160 in the context of the offence of attempted possession of a controlled drug under ss 8(*a*) and 12 of the MDA.

48 In my judgment, the court's reasoning in *Tan Thian Earn* applies equally to offences punishable under s 172A(2) of the CCA. Such offences may be committed in a great variety of circumstances and for any of a variety of reasons, so much so that it is *necessary* to give consideration to the offender's culpability. Similar to the point made at [46] above, although both parties' proposed sentencing frameworks do take into account at a subsequent stage the relevant sentencing considerations that go towards the offender's culpability, the danger is that the initial focus on the amount cheated might eclipse or dilute the significance of those considerations.

49 Third, singling out the amount cheated is not an approach that is necessarily supported by precedent. In *Yongyut*, the court observed (at [191(i)(c)]) that "as a matter of principle, the [c]ourts have always considered

the quantum involved in the offence as a starting guide for sentencing cheating cases under s 420 of the [PC]". Citing this, the Appellant submitted that "it is settled jurisprudent [*sic*] for all property-related offences [*sic*] the quantum involved would always be at the forefront of the court's consideration during sentencing". This bold claim is, however, inaccurate. In *Fernando*, for instance, the High Court rightly accepted (at [47]) that "[w]ith respect to quantum, it can … be generally surmised that the higher the quantum, the heftier the sentence". The court, however, went on to set out (at [75]) the starting point of the sentencing tariffs for credit card cheating offences prosecuted under s 420 of the 1985 PC in two different ranges, one for "syndicated and/or counterfeit/forged credit card and/or sophisticated offences" [emphasis in original omitted] (namely, 24 to 36 months' imprisonment per charge) and another for "non-syndicated stolen/misappropriated credit card offences" [emphasis in original omitted] (namely, 12 to 18 months' imprisonment per charge). It is clear from these two sentencing ranges that the amount cheated was not, in itself, at the "forefront" of the court's consideration.

50 Fourth, s 172A(2) of the CCA does not set out an upper limit to the amount cheated. Consequently, there is a danger that sentencing bands based solely on the amount cheated might be, or might seem to be, arbitrary. This is because the absence of an upper limit makes it difficult to create sentencing bands in the first place. Taking the Respondent's five sentencing bands as an example (see [26(a)] above), it is not immediately evident why the five bands involve the sums that they do and why the threshold for Band 5 is set at an amount of $2,000,000.00 and above. In this regard, I do not agree with the Respondent's submission that the offence of cheating in a casino "would appear to have a practical limit" because: (a) casino operators constantly monitor their operations for unusual activities such as suspicious behaviour by patrons or extraordinary losses; and (b) there are limits to the size of the bets that can be

placed, which in turn limits the amount that can be won from a given number of "plays". The Respondent did not offer any evidence to back up these claims, and I think it would be unwise to subjectively limit the potential and abilities of would-be casino cheats in this manner. The absence of an upper limit with respect to the relevant metric of an offence does not necessarily bar the creation of sentencing bands (see, for instance, the sentencing frameworks laid down in *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 and *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*")), but this is just one additional factor that I have considered in the round where the offence punishable under s 172A(2) of the CCA is concerned.

51 For these reasons, I decline, in the sentencing framework proposed below, to single out the amount cheated as the sole consideration at the first stage of the analysis. Instead, I regard the amount cheated as one factor, albeit an important one, that goes towards the broader question of the harm caused by the offence.

(2) Involvement of a syndicate

52 The fact that an offender commits an offence as part of a criminal syndicate is an established aggravating factor that may justify an enhanced sentence in the interests of general deterrence (see *Yap Ah Lai* at [31]). This is reflected in the two sentencing ranges set out in *Fernando* for credit card cheating offences, which are differentiated by, among other things, the involvement of a syndicate (see [49] above). This factor was also considered by the District Judge (see the GD at [27]). Aside from the *fact* of syndicate involvement, I agree with the Respondent that the *size and scale* of the syndicate concerned (and, I would add, its operations) are also relevant considerations.

53 I note that the case law sometimes appears to suggest that the involvement of a syndicate is aggravating because it would invariably engage *other* aggravating factors. For instance, the High Court in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") observed (at [25(b)]) that in addition to the aggravation accruing from the group element in syndicate crimes, deterrence was also particularly relevant in the context of such crimes *because of* the premeditation, sophistication and planning that was inevitably involved. While I do not disagree with this, I regard the involvement of a syndicate as in and of itself aggravating, and this should not be confused or conflated with other factors that are separately aggravating, such as premeditation, sophistication and planning. Syndicate involvement raises the spectre of organised crime and this has deleterious effects on Singapore as a whole. Therefore, the involvement of a syndicate, in and of itself, aggravates an offence.

(3) Involvement of a transnational element

54 The involvement of a transnational element also serves to aggravate an offence. In *Fernando*, the court held (at [67]) that foreigners and/or criminal syndicates who targeted Singapore as a platform for their crimes had to be uncompromisingly visited with very severe sentences. Likewise, in *Law Aik Meng*, the court strongly emphasised (at [42]) the significance of the transnational element in the following terms:

> I should highlight that a particularly important and relevant consideration in the present case is the "international dimension" involved. The respondent had been part of a *foreign syndicate* which had systematically targeted financial institutions *in Singapore* to carry out its criminal activities. ***The audacity and daring of such a cross-border criminal scheme must be unequivocally deplored and denounced. There is a resounding and pressing need to take a firm stand against each and every cross-border crime, not least because the prospect of apprehending such foreign***

> ***criminals presents an uphill and, in some cases, near impossible task.*** [emphasis in original in italics; emphasis added in bold italics]

55 Similarly, the court in *Yongyut* regarded (at [190(i)]) the transnational element in that case as one of the factors which pointed in favour of a deterrent sentence, and the District Judge also took this into account in her analysis (see the GD at [22], [26] and [30]). Among other things, the involvement of a transnational element aggravates an offence because of the increased difficulties that this presents to law enforcement. In addition, the transnational element usually means that crime is being imported, so to speak, into Singapore. This raises concerns over the permeation of criminality within our borders and, possibly, even the recruitment of locals into transnational criminal enterprises.

Factors going towards the offender's culpability

(1) The degree of planning and premeditation

56 I now turn to the offence-specific factors that go towards the offender's culpability. All other things being equal, an offence committed with planning and premeditation will be more aggravated than one which is committed opportunistically or on impulse. This factor was considered in *Lim Boon Kwang* (at [4]). The presence of planning and premeditation evinces a considered commitment towards law-breaking and therefore reflects greater criminality (see *Terence Ng* at [44(c)]). As Prof Andrew Ashworth explains in *Sentencing and Criminal Justice* (Cambridge University Press, 6th Ed, 2015) (at p 171):

> … A person who plans a crime is generally more culpable, because the offence is premeditated and the offender is therefore more fully confirmed in his criminal motivation than someone who acts on impulse, since he is more considered in his lawbreaking. … Planned lawbreaking betokens a considered attack on social values, with greater commitment and perhaps continuity than a spontaneous crime.

(2) The level of sophistication

57 All other things being equal, an offence committed by sophisticated means will be more aggravated than one which is committed simplistically. In *Fernando*, the court observed (at [42]):

> … A sophisticated offence replete with carefully-orchestrated efforts and steps to avoid detection is an aggravating factor in sentencing. … Conversely, where an offence is relatively unsophisticated and minimal precautions are taken to avoid detection, a comparatively lower sentence would generally be imposed …

58 The level of sophistication of the offence encompasses considerations including the complexity and scale of the criminal operation in question. It was taken into account by the court in *Yongyut* (at [190(ii)]) and the District Judge (see the GD at [22] and [26]). As noted in the passage quoted above, it is also closely related to the question of the difficulty of detection, which was considered in *Yongyut* (at [190(iii)]) and *Lim Boon Kwang* (at [5]), as well as by the District Judge (see the GD at [26]).

(3) The duration of offending

59 All other things being equal, an offence perpetrated over a sustained period of time will be more aggravated than a one-off offence. The duration of offending indicates how determined the offending conduct is, and is also tied to the notion of specific deterrence. As the court observed in *Fernando* (at [43]):

> The length of time a particular scam or offence has gone undetected would be yet another relevant consideration in sentencing. … The relevance of this … as a sentencing consideration may also be tied to the recalcitrance of the offender. In the case of a hardened offender, he would have repeatedly committed a pattern of offences without any sign or acknowledgment of contrition or remorse. *The longer the period of time over which the offences have been committed, the more irrefutable it is that the offender manifests the qualities of a habitual offender. Specific deterrence is incontrovertibly an*

> *important sentencing consideration in such cases.* [emphasis added]

(4) The offender's role

60 The offender's role is a factor that is especially relevant where the offence in question involves a syndicate. All other things being equal, an offender who is higher up in the syndicate's hierarchy will, by virtue of his position, be more culpable than an offender who occupies a position at the lower rungs. In the context of credit card cheating offences, the court in *Fernando* held (at [44]) that the severity of the sentence imposed should reflect the role played by the offender, and that this principle featured prominently in cases involving syndicates. This factor was also alluded to by the High Court in *Public Prosecutor v Pang Shuo* [2016] 3 SLR 903 (at [40]) as follows:

> If an offender was involved in a syndicated operation, it would be an aggravating factor that justifies an enhanced sentence in the interest of general deterrence … This would thus be an aggravating factor not present in the standard case that requires an upward adjustment. However, I am of the view that *a nuanced approach has to be taken in relation to this aggravating factor to avoid over-penalising the offender who is merely a paid worker working on behalf of the syndicate and is therefore fairly low down in the management hierarchy of the criminal syndicate having no share in the profits of the smuggling enterprise nor any management control of the syndicate. …* [emphasis added]

61 Even in non-syndicate cases, the offender's role is a relevant sentencing consideration (see *Fernando* at [45]). This follows simply because the role played by the offender will be a critical, if not the most critical, indicator of his culpability. Unsurprisingly, the District Judge also took this factor into account (see the GD at [20]).

(5) Abuse of position and breach of trust

62 Where there is an abuse of position and breach of trust, this will aggravate the offence (see *Terence Ng* at [44(b)]). In the context of offences punishable under s 172A(2) of the CCA, this would arise where such offences are committed by casino employees and, conceivably, where the offender colludes with such employees (as was the case in *Lim Boon Kwang*).

Offender-specific factors

63 I now turn to the offender-specific factors. I do not propose to discuss these in great detail. As I have noted, offender-specific factors are generally applicable across all criminal offences (see [36] above), and are therefore well settled in our criminal jurisprudence.

Aggravating factors

(1) Offences taken into consideration for sentencing purposes

64 While a court is not bound to increase an offender's sentence merely because there are offences taken into consideration for sentencing purposes, it may and often will do so, especially where these offences are of a similar nature (see *Terence Ng* at [64(a)]).

(2) Relevant antecedents

65 The presence of relevant antecedents is a well-established aggravating factor (see *Terence Ng* at [64(b)]).

(3) Evident lack of remorse

66 An evident lack of remorse is another aggravating factor (see *Terence Ng* at [64(c)]). In *Yongyut*, the court considered (at [190(iv)]) the fact that the

offenders had claimed trial but had then failed to offer any primary evidence as an indication of a lack of remorse.

Mitigating factors

(1) A guilty plea

67 A timeous guilty plea is a well-established mitigating factor. In *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653, the High Court observed (at [53]) that there were two jurisprudential bases upon which a reduction in sentence for a timeously-effected guilty plea could be justified. The first (which the court termed the "utilitarian" approach) was pragmatic: a timeous guilty plea saved the criminal justice system resources that would have been expended with a full trial; furthermore, in certain cases, it spared vulnerable victims and witnesses from having to testify. The second (which the court termed the "remorse-based" approach) was moral: under this approach, what warranted a reduction in sentence was not the fact of the offender pleading guilty, but rather, "the essence of a guilty plea constituting genuine remorse" (and, I would add, the offender's willingness and readiness to meet the consequences of his offending conduct in an attempt to redeem himself). The court held (at [56]) that "only a remorse-based approach … has any currency in the context of our current jurisprudence", and concluded (at [77]) that a plea of guilt could be taken into consideration in mitigation when it was motivated by genuine remorse, contrition or regret and/or a desire to facilitate the administration of justice.

68 This strict position was recently refined in *Terence Ng*, where the Court of Appeal declined to reject the utilitarian approach. The court held (at [69]):

> We think the principle of the matter is this. The criminal law exists not only to punish and deter undesirable conduct, but

> also to (a) help the victims of crime; (b) ensure that those suspected of crimes are dealt with fairly, justly and with a minimum of delay; and (c) to achieve its aims in as economical, efficient and effective a manner as possible … The utilitarian approach properly reflects the contributions that a guilty plea makes to the attainment of these wider purposes of the law. The consideration here is not just a matter of dollars and cents. An important consideration here is the need to protect the welfare of the victims (particularly victims of sexual crimes, whose needs the law is particularly solicitous of) who must participate in the criminal justice process … It would be consistent with the policy of the law in this regard to encourage *genuine* pleas of guilt to be entered (instead of encouraging a guilty accused to trying [*sic*] his luck by attempting to trip the victim up in her testimony), in order that the trauma suffered by victims need not be amplified by having to recount the incident in court. [emphasis in original]

(2) Voluntary restitution

69 Voluntary restitution effected by the offender, which is not the same as the recovery by the authorities of all or any part of the amount cheated (a point which I discussed earlier at [41]–[42] above), is also generally a mitigating factor. In *Fernando*, the court held (at [50]) that if an offender of his own volition and out of contrition returned the items or benefits procured from his offence *before* his personal involvement had been detected, this should have a material bearing on the sentence imposed. However, the court said too (likewise at [50]) that "restitution of any kind" was also usually a relevant sentencing consideration, although it highlighted that the basis on which mitigating value was given to efforts at restitution was the assumption that voluntary restitution reflected the offender's true remorse.

(3) Cooperation with the authorities

70 Cooperation with the authorities is a mitigating factor when it is borne out of remorse (see *Terence Ng* at [65(a)] and *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [72]). In *Vasentha*, I held (at

[72]–[73]) that the relevance and weight that should be given to an offender's cooperation with the authorities would depend on the circumstances of the case. Substantial mitigating weight might be given in cases where the offender extended his cooperation even beyond his own confession (see, *eg*, *Public Prosecutor v Wong Jia Yi* [2003] SGDC 53).

The sentencing framework for offences punishable under s 172A(2) of the CCA

71 Having outlined the relevant sentencing considerations that apply in the context of offences punishable under s 172A(2) of the CCA, I now propose a sentencing framework for these offences. Before proceeding to do so, I make two preliminary observations.

72 First, this framework is intended to apply to offenders who *claim trial*. In this regard, I agree with the following observations in *Terence Ng* (at [40]):

> … [W]e would clarify that the benchmark sentences we are laying down apply to "contested cases" – that is to say, convictions entered *following trial*. There are at least two reasons for this. The first is based on sentencing theory. The mitigating value of a plea of guilt cannot be fixed, but is personal to the particular *offender*, and it is affected by factors such as the degree of remorse displayed and the extent to which the offender had "no choice" but to plead guilty because he had been caught *in flagrante delicto* … We will elaborate on the proper weight to be ascribed to a plea of guilt later, but it suffices to say for now that it is clear that this makes it difficult to set a benchmark sentence by reference to uncontested cases [where] no uniform weight can be attached to a plea of guilt. The second is an argument based on constitutional principle. The law accords every accused person a basic right to plead not guilty and to claim trial to a charge … If the benchmarks were set by reference to uncontested cases then it would follow that an uplift should be applied where an offender claims trial. This would lead to the "appearance" that offenders who claim trial are being penalised for exercising their constitutional right to claim trial … [emphasis in original]

73 I note that the court in *Terence Ng* went on to state (at [41]) that its comments as just quoted above did not mean that it would never be appropriate to promulgate a benchmark sentence on the basis of an uncontested case, and that it might be appropriate to do so where, for example, the "typical case" was one where the charge was uncontested. In the context of offences punishable under s 172A(2) of the CCA, given the relatively short existence of this provision (which came into effect only in January 2013), it seems to me too soon to conclude what the "typical case" under this provision would be. The framework proposed below therefore applies to contested cases, with a guilty plea taken into account as an offender-specific mitigating factor at the fourth step (see [80] below).

74 Second, and again flowing from the relatively short existence of s 172A(2) of the CCA, the dearth of sentencing precedents means that the framework which I suggest below should not be regarded as being cast in stone. With the accretion of case law, aspects of this framework may need to be subsequently reconsidered and refined. For instance, I have already emphasised that the sentencing considerations identified in the table at [37] above are non-exhaustive (see [38] above). As our case law develops, these sentencing considerations may be added to.

75 Turning now to the framework proper, this comprises a total of five steps and draws inspiration from the frameworks established in *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 ("*Stansilas*") (in the context of drunk driving which causes physical injury and/or property damage) and *Terence Ng* (in the context of rape).

First step: Identify the level of harm and the level of culpability

76 The *first step* is to have regard to the offence-specific factors set out in the table at [37] above and identify: (a) the level of harm caused by the offence; and (b) the level of the offender's culpability.

77 The harm caused by the offence may be categorised into one of three levels: slight, moderate or severe. Similarly, the offender's culpability may be categorised into one of three levels: low, medium or high. I am aware that in *Stansilas*, I provided a description (at [75]) of each of the different levels of harm and different levels of culpability set out in that case. However, that was possible because the level of harm and the level of culpability there were each measurable by reference to only two yardsticks (namely, physical injury and property damage in the case of harm, and alcohol level and the manner of driving in the case of culpability). In the present context, a larger number of harm- and culpability-related factors have been identified, and it is not desirable at this still early stage to be too prescriptive about when a case should be categorised as being of slight, moderate or severe harm and low, medium or high culpability. These are ultimately matters of judgment for the sentencing court in the exercise of its sentencing discretion.

Second step: Identify the applicable indicative sentencing range

78 Once the sentencing court has identified the level of harm caused by the offence and the level of the offender's culpability, the *second step* is to identify the applicable indicative sentencing range. Having regard to the sentencing range stipulated in s 172A(2) of the CCA, I consider the indicative sentencing ranges in the following matrix to be appropriate:

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine	Up to 1 year's imprisonment	1 to 3 years' imprisonment
Medium	Up to 1 year's imprisonment	1 to 3 years' imprisonment	3 to 5 years' imprisonment
High	1 to 3 years' imprisonment	3 to 5 years' imprisonment	5 to 7 years' imprisonment

Third step: Identify the appropriate starting point within the indicative sentencing range

79 After identifying the indicative sentencing range, the *third step* is to identify the appropriate starting point *within* that range. This is to be done with regard, once again, to: (a) the level of harm caused by the offence; and (b) the level of the offender's culpability. In other words, this step will engage the same offence-specific factors as those considered at the first step. This is not an instance of double-counting any factors. Rather, it is a matter of *granulating* the case before the court in order to arrive at a sense of what the starting point in that particular case should be for sentencing purposes.

Fourth step: Make adjustments to the starting point to take into account offender-specific factors

80 Once an appropriate starting point within the indicative sentencing range has been identified, the *fourth step* is to make such adjustments to the starting

point as may be necessary to take into account the offender-specific aggravating and mitigating factors identified in the table at [37] above. As is the case with the framework established in *Terence Ng* (at [62]), it is possible that an adjustment beyond the indicative sentencing range may be called for, although the court should set out clear and coherent reasons if it considers that this should be done.

Fifth step: Make further adjustments to take into account the totality principle

81 The four steps described thus far would allow a sentencing court to arrive at a sentence for each individual charge. In cases where an offender has been convicted of multiple charges, the *fifth step* is to consider the need to make further adjustments to take into account the totality principle. This applies especially where an offender is punished with three or more sentences of imprisonment, in which case s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") mandates that at least two of the sentences are to run consecutively. In such situations, further adjustments to the *individual* sentences imposed on the offender may be required so as to ensure that the *aggregate* sentence is not excessive.

82 If such further adjustments are necessary, it is important that they are explicitly made as a separate step. As the Court of Appeal held in *Terence Ng* (at [72]):

> The process we have described above should enable a sentencing court to derive the appropriate sentence for each individual offence of rape. Where an accused faces multiple charges, it may be necessary for the sentencing court to recalibrate the sentences imposed for each offence by reason of the totality principle (particularly since s 307(1) of the CPC mandates that a court which convicts and sentences an offender to three or more sentences of imprisonment must order the sentences for [at least] two of them to run consecutively). In such a situation, it is important for the court to proceed

> sequentially: it must first decide on the appropriate sentences for each offence (that is to say, absent consideration of the totality principle) *before* deciding on the adjustments that are required to be made to the individual sentences imposed in the light of the totality principle. … In our judgment, this promotes transparency and consistency in sentencing. … [emphasis in original]

83 The court made the same point when it subsequently summarised the framework established in that case and stated (at [73(d)]) that where consecutive sentences were mandated:

> … [T]he court can, if it thinks it necessary, further calibrate the individual sentence to ensure that the global sentence is appropriate and not excessive. When it does so, the court should explain itself so that the individual sentence imposed will not be misunderstood.

84 As to the content of the totality principle, this comprises two limbs. The first examines whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed, while the second considers whether the effect of the aggregate sentence on the offender is crushing and not in keeping with his past record and his future prospects (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [54] and [57] respectively). It has been said that the totality principle is one of limitation and is a manifestation of the requirement of proportionality that runs through the gamut of sentencing decisions (see *Shouffee* at [47]).

Application of the sentencing framework to the present appeal

85 I now apply this sentencing framework to the present appeal.

First step: Identify the level of harm and the level of culpability

86 As mentioned at [76] above, the first step is to have regard to the offence-specific factors set out in the table at [37] above and identify: (a) the level of harm caused by the offence; and (b) the level of the offender's culpability.

The level of harm caused by the Appellant's offences

87 With respect to the level of harm caused by the Appellant's offences, the present case involved a syndicate and a transnational element. In my judgment, where one or both of these factors feature in an offence, the level of harm caused would, in the usual course, be *at least* moderate. These factors have deleterious effects on law and order in particular and Singapore society in general, and must therefore be denounced by the courts.

88 The amount cheated by the Appellant ranged from $6,401.70 to $30,959.90 per charge. The total amount cheated was $106,243.13 based on the proceeded charges, and slightly under $109,000.00 based on both the proceeded charges and the charges taken into consideration for sentencing purposes. These are not small sums. However, they have to be seen in the wider context of the *type* of cheating (namely, *casino* cheating) caught by s 172A of the CCA. It would not at all be surprising should future cases involve sums that are *far* in excess of the total amount cheated in the present case. Indeed, *Yongyut* serves as an example of this. In this connection, I reiterate that I do not accept the Respondent's unsubstantiated submission that the offence of cheating in a casino should be treated as being subject to a practical limit (see [50] above). Seen from this perspective, the amount cheated by the Appellant may be regarded as modest.

89 I pause here to address two issues which arise in relation to the amount cheated in the present case. First, the Appellant contended that the District Judge attributed only the sum of $30,959.90 (being the amount cheated in DAC 919377/2016 (see [9] above)) to him. It is not entirely clear if the District Judge did in fact do that. Even if she did, to the extent that the Appellant was seeking to commend this approach, I flatly reject it. The Appellant faced five proceeded charges for colluding with Skubnik and Egorov to cheat at play (see [10] above). Even if it were Skubnik and Egorov who won the sums involved in those charges, those sums should also be attributed to the Appellant, who stood to earn a share of their winnings as well. Second, as the amount cheated was recovered by the police, the Appellant repeatedly emphasised that no losses were therefore eventually sustained by the casinos. As I have already stated, the recovery by the authorities of all or any part of the amount cheated should not, in the ordinary course of events, carry much weight (see [42] above), and I see no reason to take a different view in this case. For completeness, I note that there is nothing to suggest that the recovery of the amount cheated in this case was made possible only by reason of the Appellant's assistance.

90 Considering matters in the round, the level of harm caused in this case is, in my judgment, moderate.

The level of the Appellant's culpability

91 As for the level of the Appellant's culpability, there was certainly a significant degree of planning and premeditation, and the offences were also fairly sophisticated. The offending behaviour took place over fairly substantial periods, spanning between around one and a half and six hours per charge and over four days cumulatively; it was certainly not a one-off affair.

92 The Appellant disputed that the scheme was sophisticated. He submitted that the smartphone devices involved were not particularly complex to use or sophisticated. They were activated simply by the user entering a designated code. Once activated, the smartphone device would emit vibrations to prompt the user as to when to play the slot machines. The Appellant said that this could hardly be described as a complicated, complex or sophisticated method of cheating. In this regard, it was pointed out that, as evidenced by some of the charges taken into consideration for sentencing purposes, the Appellant in fact suffered losses on some occasions (the charges relating to those occasions were framed as charges of cheating at play by *attempting* to obtain an advantage). Furthermore, the Appellant contended, the analysis and decoding of the data were carried out outside Singapore, and there was no evidence as to how the pre-recorded play patterns of the slot machines were analysed and how such data was decoded for transmission to the smartphone devices. It was also submitted that it was not the case that the Appellant was involved in the entire scheme right from the outset, or had a hand to play at each step of the scheme. In particular, it was highlighted that the Appellant was not involved in the analysis and decoding of the data.

93 I do not see any merit in the Appellant's contentions. The scheme in which the Appellant, Skubnik and Egorov participated was not a simple ruse, but a technologically-elaborate one that was executed over several months by a myriad of actors. The Respondent emphasised that the scheme involved: (a) the pre-planned recording of play patterns by other syndicate members; (b) the sophisticated and complex analysis and decoding of that information using computer algorithms; and then (c) the actual commission of the offences by the Appellant, Skubnik and Egorov using specially-prepared smartphone devices which were easily concealable. Moreover, the use of those devices made the offences harder to detect. I agree with this. In my judgment, it is not open to the

Appellant to argue that the scheme in which he participated was not sophisticated because such a characterisation is simply not compatible with the admitted facts. As for the Appellant's arguments that he was not involved in the entire scheme right from the outset, did not have a hand to play at every step of the scheme and was not involved in the analysis and decoding of the data, these are simply irrelevant to the question of the sophistication of the *scheme*, which the Appellant was no doubt an integral part of.

94 With regard to his role in the scheme, the Appellant accepted that he was more culpable than Skubnik and Egorov. In view of the facts recounted at [6]–[8] above, this concession was rightly made. The Appellant's greater role is evident not just through his greater involvement, but also in his larger potential reward.

95 However, the Appellant also contended that the actions of the other syndicate members should not be attributed to him. In particular, it was highlighted that there was no evidence of the Appellant's role in the uploading of the data to the server or the analysis and decoding of the data. Moreover, while the Appellant had made arrangements for some syndicate members to travel to Singapore in March 2016 (see [6] above), he had done so pursuant to "Igor's" instructions and had not been told the purpose of the trip. I fail to see how these submissions assist the Appellant's case. The fact remains that the Appellant had *some* sort of leadership role within the syndicate. While he might not have been at the apex of its hierarchy, he was also clearly not a mere foot soldier. As far as the particular operation in Singapore went, he was in fact the leader on the ground.

96 It is appropriate here to deal with the Appellant's contention that his actions were borne out of a genuine fear of the repercussions of not complying

with the instructions of "Igor". To put this in context, the Appellant claimed that he had fallen victim to a property investment scam which had left him in debt. He had then taken a loan from the syndicate, and as a result, was "beholden" to the syndicate as well as "Igor", and was compelled to carry out their instructions out of fear for his and his family's safety. In respect of the trip to Singapore in May 2016, the Appellant and Egorov had decided to bring their wives here for a holiday to celebrate Egorov's wedding anniversary and birthday. However, "Igor" got wind of the trip and directed the Appellant to get in touch with Skubnik. The District Judge appears to have accepted that this could, in principle, be mitigating. However, she found that there was no evidence to back up the Appellant's "vague claim" of the alleged loan from the syndicate, and thought that it was "rather odd" that despite being indebted, the Appellant and his wife could afford to come to Singapore for a holiday (see the GD at [29]). The District Judge thought that even if the Appellant were to be believed, "for such syndicated transnational offences where general deterrence has a very substantial role in sentence, general deterrence is not excluded by threats" (see the GD at [30]). In the premises, the District Judge did not give weight to this factor.

97 The law has always recognised that motive affects the degree of an offender's culpability for sentencing purposes, and those who are motivated by fear will usually be found to be less blameworthy (see *Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 at [37]). Thus, the Appellant's claims that he acted out of fear could, *if established*, carry mitigating weight. This also harks back to the point already made that the sentencing considerations identified in the table at [37] above are non-exhaustive (see [38] above). Given the nature of the Appellant's claims and the fact that the purported events took place in a foreign country, I recognise that it might be onerous to require the Appellant to provide further evidence of his claims. However, his assertions cannot be

unthinkingly accepted. They must be carefully evaluated, and here, I agree with the District Judge that it was "rather odd" that despite being indebted, the Appellant and his wife could afford to come to Singapore for a holiday. In my judgment, the District Judge was correct in her scepticism concerning the Appellant's claims, and I similarly do not accord any weight to them.

98 Finally, there was no abuse of position or breach of trust. All things considered, the level of the Appellant's culpability is, in my judgment, medium.

Second step: Identify the applicable indicative sentencing range

99 The second step is to identify the applicable indicative sentencing range. Based on the matrix set out at [78] above, the applicable indicative sentencing range would be one to three years' (or 12 to 36 months') imprisonment.

Third step: Identify the appropriate starting point within the indicative sentencing range

100 The third step is to identify the appropriate starting point within the indicative sentencing range. In my judgment, and having regard to what has been said at [87]–[98] above, the Appellant's sentences should fall at the lower to middle level of the indicative sentencing range. Accordingly, I identify the appropriate starting points within this range as follows:

SN	Charge	Amount cheated	Sentence
1	DAC 919377/2016	$30,959.90	24 months' imprisonment
2	DAC 919379/2016	$6,401.70	15 months' imprisonment
3	DAC 919380/2016	$13,551.58	18 months' imprisonment
4	DAC 919385/2016	$18,982.50	20 months' imprisonment
5	DAC 919392/2016	$14,573.00	18 months' imprisonment
6	DAC 919395/2016	$21,774.45	22 months' imprisonment

Fourth step: Make adjustments to the starting point to take into account offender-specific factors

101 The fourth step is to make such adjustments to the starting point as may be necessary to take into account the offender-specific aggravating and mitigating factors identified in the table at [37] above.

Aggravating factors

102 With respect to the aggravating factors, the Appellant had ten similar charges taken into consideration for sentencing purposes. However, he had no antecedents and there was no evident lack of remorse.

Mitigating factors

103 As for the mitigating factors, I give weight to the Appellant's guilty plea and his cooperation with the authorities. However, I also note that there was no voluntary restitution of the amount cheated.

104 The Appellant contended that: (a) save for a "brief one-liner" in the GD, the District Judge did not appear to give sufficient consideration to and place sufficient weight on his guilty plea, and it is unclear whether the District Judge even accorded any weight to it; and (b) it is unclear if any weight was accorded to the Appellant's cooperation with the authorities. These contentions are wholly without merit. It is plain from the GD that the District Judge not only expressly identified (at [28]) these mitigating factors, but also sought to balance them (at [31]) against the seriousness of the Appellant's offending conduct (which she thought required an enhanced sentence). In my judgment, the District Judge paid sufficient attention to these mitigating factors, and it is not clear what more she could have said about them in the GD.

Balancing the aggravating and mitigating factors

105 Balancing the fact that the Appellant had ten similar charges taken into consideration for sentencing purposes (see [102] above) against his guilty plea and his cooperation with the authorities (see [103] above), there are, in my judgment, no further adjustments required at the fourth step.

106 As a cross-check on consistency, I measure the individual sentences derived against the sentencing range set out in s 172A(2) of the CCA. The individual sentences of 15 to 24 months' imprisonment (see [100] above) amount to around 18 to 29% of the maximum term of seven years' imprisonment. I bear in mind, however, that this: (a) does not take into account cases involving slight harm and low culpability, which would generally be punished with a fine (see the matrix set out at [78] above); and (b) has to be looked at on the basis of only the *individual* charges of which the Appellant was convicted. Having regard to these two points, I am satisfied that the individual sentences derived are appropriate.

Fifth step: Make further adjustments to take into account the totality principle

107 Because the present case involves multiple charges, the fifth step is to consider the need to make further adjustments to take into account the totality principle. Moreover, s 307(1) of the CPC applies in this case such that at least two of the Appellant's imprisonment sentences have to run consecutively.

108 I begin this stage of the analysis by considering two logically anterior questions. First, I consider whether there is any need to order more than two sentences to run consecutively. In *Shouffee*, I noted (at [80]) the following observations by V K Rajah JA in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 (at [146]):

> … There is no rigid linear relationship between the severity of the offending and the length of the cumulative sentence. In my view, an order for more than two sentences to run consecutively ought to be given serious consideration in dealing with distinct offences when one or more of the following circumstances are present, *viz*:
>
> (a) dealing with persistent or habitual offenders (see [141] above);
>
> (b) there is a pressing public interest concern in discouraging the type of criminal conduct being punished (see [143]–[144] above);
>
> (c) there are multiple victims; and
>
> (d) other peculiar cumulative aggravating features are present (see [92] above).
>
> In particular, where the overall criminality of the offender's conduct cannot be encompassed in two consecutive sentences, further consecutive sentences ought to be considered. I reiterate that the above circumstances are non-exhaustive and should not be taken as rigid guidelines to constrain or shackle a sentencing court's powers. … In the ultimate analysis, the court has to assess the totality of the aggregate sentence with the totality of the criminal behaviour.
>
> [original emphasis omitted]

Having regard to this, I do not think it is necessary or appropriate to order more than two sentences to run consecutively in the present case.

109 Second, I consider which two sentences should run consecutively. In my judgment, it would be appropriate to order, as the District Judge did (see [13] above), the sentence for DAC 919377/2016 (which is the offence committed by the Appellant's own use of the smartphone device) and the sentence for DAC 919395/2016 (which is the most serious of the collusion charges) to run consecutively. These two charges relate to distinct offences. This would result in a provisional aggregate sentence of 46 months' imprisonment. This strikes me as possibly excessively high because it is almost double the longest

individual sentence imposed on the Appellant (namely, 24 months' imprisonment for DAC 919377/2016).

110 Having regard to the overall criminality involved, I think that the aggregate sentence should be reduced in this case. As I have already noted, a term of 46 months' imprisonment is almost double the sentence for DAC 919377/2016. This offends the first limb of the totality principle (see [84] above) and therefore indicates the need for a downward adjustment to the aggregate sentence. At the same time, however, such an adjustment should be modest because the Appellant doubtlessly committed serious offences which must be met with a correspondingly substantial custodial term. In the final analysis, the totality principle is a manifestation of the requirement of *proportionality* (see [84] above). In my judgment, a term of 38 months' imprisonment would serve this end. I therefore reduce the individual sentences for DAC 919377/2016 and DAC 919395/2016 to 20 months' and 18 months' imprisonment respectively.

Conclusion

111 In the circumstances, I set aside the individual and aggregate sentences imposed by the District Judge, and impose instead the following individual sentences on the Appellant:

SN	Charge	Original sentence	Sentence on appeal
1	DAC 919377/2016	24 months' imprisonment	20 months' imprisonment
2	DAC 919379/2016	12 months' imprisonment	15 months' imprisonment
3	DAC 919380/2016	15 months' imprisonment	18 months' imprisonment
4	DAC 919385/2016	18 months' imprisonment	20 months' imprisonment

SN	Charge	Original sentence	Sentence on appeal
5	DAC 919392/2016	15 months' imprisonment	18 months' imprisonment
6	DAC 919395/2016	21 months' imprisonment	18 months' imprisonment

112 The sentences for DAC 919377/2016 and DAC 919395/2016 are to run consecutively, making an aggregate sentence of 38 months' imprisonment. The Appellant's appeal is thus allowed in this regard. The District Judge ordered the sentence to take effect from 10 May 2016, and I do not disturb that.

Sundaresh Menon
Chief Justice

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