IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 18

Criminal Case No 2 of 2022

Between

Public Prosecutor

And

CNJ

SENTENCING REMARKS

[Criminal Procedure and Sentencing] — [Sentencing] — [Young offenders]

Public Prosecutor
v
CNJ

[2022] SGHC 18

General Division of the High Court — Criminal Case No 2 of 2022
Aedit Abdullah J
24 January 2022

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Aedit Abdullah J:

1 While all offences causing death are tragic, the death of one member of a family by another is always poignant. The question will always be asked what could have brought the ties that should have been the most durable to such fraying. One has no doubt that a great burden of regret will remain on the accused and the surviving family members for the rest of their lives. But even amidst that sadness, the law must still be vindicated by the courts, findings made and punishment imposed.

2 The accused has pleaded guilty to one charge of culpable homicide that is not murder, punishable under s 299 read with s 304(a) of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"). The sole question in this case is the sentence to be imposed. Having considered the facts and submissions, I have concluded that the appropriate sentence is five years' detention.

The legislative framework

3 Section 38 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) (the "CYPA") (now s 43 of the 2020 revised edition) provides that where the court sentences a child or young person convicted of murder or culpable homicide that is not murder, and is of the opinion that no other method of dealing with the case is suitable, the court may order the offender to be detained for a specified period of time. The accused is a "young person" as defined under s 2 of the CYPA, being 15 years of age. Both the Prosecution and the Defence are content to argue on the basis that the punishment to be imposed should be that provided for by s 38.

4 There appears to be an absence of authority on how the court determines the length of detention.

5 Section 38 of the CYPA requires that the court is of the opinion that other methods for dealing with the case are not suitable, which also means that the court does need to make an express determination that a sentence of detention is in fact suitable. In this regard, the Prosecution has referred to the fact that the accused is not unruly, but I do not think that unruliness is the sole standard. Rather, given the youth of the offender, the court would need to consider whether any objective of rehabilitation is entirely displaced, and whether the full weight of the normal punishment such as imprisonment (which may extend to life under s 304(a) of the Penal Code), should nonetheless be imposed. Such a situation would presumably be rare, but one cannot rule out the possibility that an offence may be committed in such heinous circumstances that it requires such a heavy punishment to be visited even on a young offender.

6 Here, there was nothing of that nature. The death of the father is tragic, but that does not by itself, given the youth of the offender, pull the offender out of the ambit of the alternative sentencing regime specified in s 38 of the CYPA. Detention is thus the punishment to be imposed.

7 While I am grateful to the Prosecution for identifying possible parallels with imprisonment cases, the length of detention cannot however be determined by such parallels drawn with sentences imposed on adults – there is and should be a qualitative difference between imprisonment and detention.

8 Given the ability of the Minister to release a detained offender on licence under s 38(4) of the CYPA (now s 43(4) of the 2020 revised edition), one approach would have been for the court to consider what would be an appropriate maximum term of detention, to be cut down by the Minister in the exercise of discretion. On that approach, the court would presumably act cautiously and lean towards longer sentences generally. However, I accept that given the dearth of guidance in the local context that such an approach may create great uncertainty. For the moment at least then, the best approach is for the court to consider what is appropriate bearing in mind the sentencing objectives, and to treat the possibility of release on licence as being somewhat exceptional, or at least not run-of-the-mill.

9 I should also note that s 38 of the CYPA does not expressly provide for backdating, which indicates that that power is not conferred on the courts, though a conclusive pronouncement will need to await considered arguments in an appropriate case.

The relevant sentencing objectives

10 The length of detention should be calibrated on a principled basis, which requires consideration of the purposes of detention. There has been no reported pronouncement on this. But given that it is prescribed for the punishment of minors who have committed various serious crimes, the objectives conceivably ought to encompass rehabilitation, protection of the public, retribution and specific deterrence. General deterrence is presumably excluded, given that detention is a special regime, replacing imprisonment.

11 Of the various objectives, rehabilitation is important, given the age and immaturity of the offender. This has been described in various cases such as *PP v ASR* [2019] 1 SLR 941 as being the dominant consideration. It is material that under s 38(4) of the CYPA, the offender may be released on licence upon the Minister's determination. That opportunity to be released further reinforces the conclusion that rehabilitation is a very important facet. I would however note that in the context of s 38, it is not the sole consideration. Protection of the public would also be relevant and would be tied to the rehabilitative efforts since if rehabilitation is successful, the public would presumably be safer. Specific deterrence and punishment may also be in play given the gravity of the offence and the need to ensure it is not repeated by the offender. In particular, retribution remains material as a life has been lost and some consequence must be visited upon the offender.

12 In determining the appropriate sentence, bearing in mind these various objectives, the details given by the Prosecution about the rehabilitative programmes and the conditions of detention were helpful. I note that the accused will have opportunities for education and to sit for examinations. There will also apparently be other supportive programmes. All of these go towards

rehabilitation. I am also given the assurance by the Prosecution that the prison authorities will bear in mind the accused's circumstances when he is subsequently transferred over to the prison school.

Calibration of the sentence

13 Turning therefore to the specific circumstances here, given the seriousness of the offence, the present age of the accused, and what is to be hoped from detention, I am of the view that the appropriate term of detention should be five years. I am not assured that any shorter period will enable sufficient rehabilitation and reform to be effected, so that the accused will be able to function as a law-abiding citizen and that the public will be kept sufficiently safe from any repeat. The lower sentence sought by the Defence, that is three years' restriction of freedom, would also appear to be too short given the circumstances.

14 The various factors relied upon by the Defence to argue for a period of detention cannot be given that much weight. I could not see that the accused's gaming addiction was operative and material in sentencing for this offence. Cooperation with the authorities is not of much weight as well: the investigation would not have been particularly complex here and would not have been substantively aided by any cooperation by the accused. The absence of antecedents is also to be expected in someone as young as him. Conversely, the presence of family support does not address the need for both retribution and protection. His academic promise may go to the question of rehabilitation but again does not address the need for retribution and protection. As for the mother's illness, while unfortunate, that cannot play a role in the calibration of the sentence. I would also note that his autism had no contributory link to the

commission of the offence, and is thus not material to the calibration of the sentence.

15 I do, on the other hand, accept the psychiatric assessment that the accused is not likely to repeat such a violent act, which goes towards reducing the need for specific deterrence and protection of the public.

16 Anything as short as three years would not to my mind properly serve any of the objectives. Rehabilitation in respect of an offence where death was caused deliberately, would be an objective that one would prudently expect to take a longer time to achieve, in the absence of actual evidence of progress. And a longer period is, I think, required to ensure appropriate deterrence, punishment and protection of the public. While it may be that the probability of a repeated act is low, a three-year sentence would to my mind neglect entirely the remaining possibility of a repeat.

17 At the other end of the range, I had considered whether the circumstances called for seven years' detention. This would mean that the accused would be detained till his early 20s. The advantage is that this would presumably allow for him to mature within a controlled environment. But as noted by the Defence, taking into account the period spent in remand before conviction, this would mean that the accused would effectively be serving eight years in all, which would appear to be too long. The ability to be released on licence is at present uncertain, and in the absence of clearer guidance, it would not be appropriate for me to impose a lengthier sentence that I consider appropriate simply on the basis of caution.

18 I conclude therefore that a five-year sentence of detention would balance the various considerations, and so sentence the accused.

A suggestion for the authorities

19 I would suggest to the authorities that it may be worthwhile to consider whether some form of a regime of pre-sentencing assessment should be laid out, similar to those for other alternative sentences, such as reformative training or corrective training. While one would always hope that young offenders committing murder or culpable homicide will be rare, these offences do occur. The creation of a structured pre-sentencing assessment involving psychiatrists, developmental psychologists, detention officers and other specialists will likely assist the court in calibrating the appropriate sentence.

20 I had considered whether I should call for such an assessment here despite the absence of express provisions. Section 38(1) of the CYPA (now s 43(1) of the 2020 revised edition) gives sufficient leeway to the court I should think. However, such an assessment regime will require a fairly detailed discussion with the relevant specialists and the authorities. I do not know, for instance, what sort of rehabilitation and intervention might be feasible, or what the science might indicate. I suspect the discussion and deliberation necessary on the part of the relevant authorities may take some time, and it may be that the conclusion reached by the relevant agencies is that such a regime is not necessary. Or it might even be that this was considered previously and not pursued. I thus considered it best to proceed with sentencing here.

Aedit Abdullah
Judge of the High Court

Lim Shin Hui and Han Ming Kuang (Attorney-General's Chambers) for the Prosecution;
Nathan Shashidran, Jeremy Pereira and J Jayaletchmi (Withers KhattarWong LLP) for the accused.