Thong Sing Hock v Public Prosecutor
[2009] SGHC 47

Case Number : MA 76/2008

Decision Date : 02 March 2009

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Appellant in person; Christopher Ong Siu Jin (Attorney-General's Chambers) for the respondent; Choo Si Sen (previous counsel for the appellant) in attendance

Parties : Thong Sing Hock — Public Prosecutor

Criminal Procedure and Sentencing – Revision of proceedings – Exercise of revisionary powers where there was plea of guilt – Whether court should go behind plea of guilt – Whether serious injustice was occasioned if counsel advised client to plead guilty despite knowing that client lacked requisite mens rea – Whether allegations against counsel made out – Appropriate procedure when appellate court investigated allegations of pressure by counsel

Criminal Procedure and Sentencing – Sentencing – Whether enhanced need for deterrence because appellant was senior immigration officer

Criminal Procedure and Sentencing – Sentencing – Whether lack of remorse could operate as aggravating factor

2 March 2009

V K Rajah JA:

Introduction

1 The price for a credible criminal justice system is eternal vigilance. In paying that price, the various stakeholders can from time to time be considerably inconvenienced whenever efforts are made to verify an accused's complaints. Neither the courts nor the Prosecution should baulk at inquiring into all apparently serious grievances made at any stage of the proceedings. In particular, when grave allegations such as improper pressure by counsel to plead guilty are raised, the court should not, as a matter of course, dismiss such allegations outright unless they are inherently unbelievable or unsupportable on the facts. Nevertheless, while genuine grievances must never be suppressed or buried, scurrilous and vexatious aspersions against counsel should not be allowed to fester and thereby smirch the reputation of counsel. Unmeritorious complaints of this nature, if left unchecked, can have a chilling effect on the role of counsel in criminal matters by inhibiting the giving of candid advice. Given these considerations, appellate courts have to strike a careful balance between according due process to such complaints and ensuring that unsustainable allegations are firmly dealt with.

2 In his appeal against sentence, Thong Sing Hock ("the appellant") denied that he had the requisite knowledge necessary to ground the various offences to which he pleaded guilty. When pressed further, the appellant took the position that his plea of guilt was induced by his previous counsel who had advised him to plead guilty despite being aware of this. I adjourned the hearing for the Deputy Public Prosecutor ("DPP") to invite the appellant's previous counsel to respond, by way of affidavit, to the assertions made by the appellant. The appellant was also accorded an opportunity to file a response.

3 After considering the various affidavits filed and hearing submissions by both the appellant and the DPP, I dismissed the appellant's appeal at the adjourned hearing on 12 August 2008. I was satisfied that the sentence imposed on the appellant was not manifestly excessive. In fact, it was manifestly inadequate. Accordingly, I ordered that the appellant's sentence be enhanced as follows:

(a) The sentence in respect of District Arrest Case ("DAC") No 7036 of 2008 was increased from 15 to 18 months;

(b) The sentence in respect of DAC No 7042 of 2008 was increased from six months to nine months;

(c) The sentence in respect of DAC No 7054 of 2008 was increased from three months to six months.

The aggregate sentence is thus now 33 months in substitution of the earlier sentence of 24 months. I now set out the detailed grounds of my decision, having earlier provided only brief grounds at the hearing.

Facts

4 The offences committed span the period between 22 November 2003 and 11 March 2006. During that period, the appellant was a Deputy Superintendent of the Immigration and Checkpoints Authority ("ICA"), in charge of a team of officers and holding the post of Assistant Head (Repatriation). From 16 February 2004 to 26 May 2006, he held the post of Senior Assistant Commander (Ground Operations) at the Tuas Checkpoint, having general oversight of the entire ground operations. His office was the third-highest appointment at Tuas Checkpoint.

5 The appellant faced 27 charges in the District Court in relation to the assistance he had rendered to one Song Qinghua ("Song"), a People's Republic of China ("PRC") national, who had unlawfully entered Singapore using a misleading passport which contained a false name and date of birth. The circumstances, which led her to obtain the passport with false particulars, are as follow. Song entered Singapore in 1997 to work but remained here unlawfully after her work permit expired on 1 July 2001. She was sentenced to three weeks' imprisonment for this offence, and was informed, prior to her repatriation, that she would be banned from coming into Singapore for a period of one year and subsequently, would require the approval of the Controller of Immigration before she could enter Singapore.

6 After Song returned to China, she changed her name to Song Qi and obtained a new PRC identity card with a false date of birth. She also obtained a new PRC passport with the number G10735197 in the name of Song Qi on 22 April 2002. In late 2002 or early 2003, Song became acquainted with the appellant who was in Beijing for a visit. She introduced herself as Song Qi. They exchanged telephone numbers and maintained contact after the appellant returned to Singapore. Thereafter, the appellant visited China on several occasions and developed an intimate relationship with Song. She also visited Singapore with the appellant's assistance.

7 According to the Agreed Statement of Facts ("SOF"), sometime in February 2004, the appellant became suspicious about Song's real identity as he heard her being called by the name Song Qinghua, instead of Song Qi. When queried, she admitted that her real name was Song Qinghua and that she had previously been charged and convicted for overstaying in Singapore. She also told him that she had changed her date of birth from 14 April 1969 to 5 April 1969 and had a new passport made, which stated her false name Song Qi and her false date of birth.

8 The appellant pleaded guilty to nine charges, and consented to have the remaining 18 charges taken into consideration for the purpose of sentencing. The nine charges to which the appellant pleaded guilty fell broadly into three categories: (a) unauthorised access to computer materials under s 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed) ("Computer Misuse Act"); (b) abetting Song's unlawful entry into Singapore under s 57(1)(*aa*) of the Immigration Act (Cap 133, 2008 Rev Ed) ("Immigration Act"); and (c) harbouring under s 57(1)(*d*)(i) of the Immigration Act.

9 The facts (as laid out in the SOF) pertaining to the three charges of unauthorised access to computer materials under s 3(1) of the Computer Misuse Act are as follow:

(a) Facts pertaining to DAC No 7034 of 2008 (5th charge)

Sometime in February 2004, the appellant decided to verify what Song had told him by using ICA's computer system called the National Identification Databank/Passport and Employment System ("NIDPEM"). He entered her details into NIDPEM and retrieved the ICA File Reference number of Song Qinghua. Thereafter, the appellant retrieved the ICA file on Song Qinghua and made photocopies of her PRC identity card and PRC passport in order to confirm from the photographs that Song Qi was indeed Song Qinghua. The appellant did not have the authority to access NIDPEM for his personal purposes.

(b) Facts pertaining to DAC No 7054 of 2008 (25th charge)

On a day between 1 March 2006 and 3 March 2006, the appellant, without authorisation, used a computer workstation at the Tuas Immigration Checkpoint to retrieve Song's Foreign Identification Number ("FIN") from the Immigration Central Index ("ICI") in order to check if she had been arrested.

(c) Facts pertaining to DAC No 7055 of 2008 (26th charge)

On or about 1 March 2006, the appellant again, without authorisation, used a computer workstation at the Tuas Immigration Checkpoint. This time, he entered his personal details in the Web-based Inquiry Into System Enquiry ("WISE") to tally his entry and exit records with that in his passport.

10 The facts pertaining to the four charges for abetment of unlawful entry into Singapore under s 57(1)(*aa*) of the Immigration Act are as follow:

(a) Facts pertaining to DAC No 7036 of 2008 (7th charge)

On 28 November 2004, the appellant flew to Beijing to meet Song. He bought an air ticket to Singapore for Song and also acted as her sponsor in her application for a Singapore visa. On 2 December 2004, the appellant and Song arrived in Singapore at the Changi Airport Immigration Checkpoint. Song then produced the passport with the false particulars and obtained entry. With the knowledge that Song had produced a misleading document (*ie*, a passport with false particulars) to gain entry into Singapore, the appellant intentionally abetted her unlawful entry by purchasing her air ticket for her and acting as her sponsor.

(b) Facts pertaining to DAC No 7040 of 2008 (11th charge)

The appellant again abetted Song's unlawful entry into Singapore by purchasing a return air ticket to Bangkok for her. Song (and the appellant) left for Bangkok on 31 December 2004 and returned

to Singapore on 3 January 2005 via the Changi Airport Immigration Checkpoint. Song used the passport with her false particulars to gain entry into Singapore.

(c) Facts pertaining to DAC No 7045 of 2008 (16th charge)

On 7 December 2005, the appellant flew to Beijing to meet Song. Whilst there, he again abetted Song's unlawful entry into Singapore by purchasing her air ticket and acting as her sponsor for a Singapore visa.

(d) Facts pertaining to DAC No 7049 of 2008 (20th charge)

The appellant again abetted Song's unlawful entry into Singapore by purchasing a return air ticket from Singapore to Bangkok for her. Song left for Bangkok on 10 January 2006 and returned to Singapore on 12 January 2006 using the passport with her false particulars.

11 The facts pertaining to the two charges of harbouring under s 57(1)(*d*)(i) of the Immigration Act are as follow:

(a) Facts pertaining to DAC No 7042 of 2008 (13th charge)

Between 15 January 2005 and 23 February 2005, the appellant, despite knowing that Song had entered Singapore unlawfully in contravention of the Immigration Act by using a misleading passport, arranged for her to stay at Block 10, Lakepoint Condominium, the rent for which he paid. He thus committed the offence of harbouring Song.

(b) Facts pertaining to DAC No 7042 of 2008 (17th charge)

Between 13 December 2005 and 10 January 2006, the appellant again committed the offence of harbouring when he arranged for Song to stay at Block 9D Yuan Ching Road #10-40, the rent for which he paid.

Decision of the District Court

12 The district judge ("the Judge") accepted the accused's plea of guilt to the nine charges (the facts of which are outlined above at [9]–[11]), and gave the following sentences:

(a) For the offences under s 3(1) of the Computer Misuse Act:

(i) three months' imprisonment for DAC No 7034 of 2008;

(ii) three months' imprisonment for DAC No 7054 of 2008;

(iii) two months' imprisonment for DAC No 7055 of 2008.

(b) For the offences under s 57(1)(*aa)* of the Immigration Act, read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), and punishable under s 57(1)(*ia*)(B) of the Immigration Act:

(i) 15 months' imprisonment for DAC No 7036 of 2008;

(ii) 15 months' imprisonment for DAC No 7040 of 2008;

(iii) 15 months' imprisonment for DAC No 7045 of 2008;

(iv) 15 months' imprisonment for DAC No 7049 of 2008.

(c) For the offences under s 57(1)(*d*)(i) of the Immigration Act, and punishable under s 57(1)(iv) of the Immigration Act:

(i) six months' imprisonment for DAC No 7042 of 2008;

(ii) six months' imprisonment for DAC No 7046 of 2008.

The sentences in DAC No 7036 of 2008, DAC No 7042 of 2008 and DAC No 7054 of 2008 were ordered to run consecutively, while the remaining six sentences were to run concurrently. The aggregate sentence was thus 24 months.

13 In considering the sentences to be imposed, the Judge was heavily influenced by the fact that the appellant was a senior immigration officer who had been complicit in the commission of a multitude of offences against the very laws he was duty-bound to uphold. This is evident from [22] and [33] of her decision in *PP v Thong Sing Hock* [2008] SGDC 97 ("the GD"):

> 22 …There is a need to reflect that there was an abuse of the trust and responsibility reposed in the accused as a senior immigration officer by his commission of the twenty-two offences against the very laws he was required to uphold. …
>
> …
>
> 33 In determining whether the accused's status as an immigration officer is relevant in sentencing, the critical consideration is that it was the accused's duty to uphold and enforce the immigration laws. He did not simply overlook the breach of the immigration laws but abetted the commission of some of the offences and committed the other offences himself. He did not cease being an immigration officer, or carrying out the duties and responsibilities because these events did not take place in the course of his official duty. Further, his offences struck at the core of ICA's integrity in the administration and enforcement of immigration laws and certainly had the effect of tarnishing the credibility of ICA and its officers and diminishing the confidence of the public in the discharge of its functions. As such, I took the view that the accused's position was an aggravating circumstance in sentencing.

14 Dissatisfied with the Judge's decision, and particularly because she took into account his previous office as an aggravating factor, the appellant appealed against sentence.

Proceedings on appeal

15 When the appeal against sentence was first heard on 1 July 2008, the appellant disputed that he knew of Song's immigration history in early 2004, claiming that he only learnt that Song Qi and Song Qinghua were one and the same person sometime in February 2006 when she was arrested. This entirely contradicted the SOF which stated, at para 13, that Song had admitted to the appellant in February 2004 that her real name was Song Qinghua instead of Song Qi, and that she had been previously charged and convicted of overstaying in Singapore. According to the SOF, Song had also informed the appellant that she had changed her official birth date and was in possession of a new passport which stated a false name and a false date of birth.

16 The appellant's allegations struck at the very heart of the basis of his conviction since his knowledge of Song's real identity and her immigration status was an essential ingredient of all the charges to which he had pleaded guilty, save for the 25th charge and the 26th charge, both of which related to his unauthorised accessing of computer workstations in March 2006. If the appellant had only found out that Song was Song Qinghua in February 2006, he would not have the requisite knowledge to ground the charges in DAC No 7034, 7036, 7040, 7042, 7045 and 7049 of 2008. When I queried the appellant on why he had pleaded guilty if he had no knowledge that Song was Song Qinghua at the relevant time, he immediately alleged that his previous counsel had advised him to plead guilty despite being fully apprised that he had only found out that Song was Song Qinghua in early 2006. As a layman, he had then felt it best to accept expert advice since his previous counsel had said that this was "the best way for [him] to get out of [his] mess situation [*sic*] early, and move on with life after [he] had served [his] sentence".[note: 1]

17 While I was not altogether convinced at that juncture that the appellant's allegations could withstand closer scrutiny, I could not abruptly dismiss them as inherently unbelievable or unsupportable on the facts. I therefore ordered that the hearing be adjourned and gave directions to the DPP to invite the appellant's previous counsel to respond to the appellant's allegations (see [2] above). I also directed the DPP to investigate this matter further and place before the court any objective evidence that the appellant knew, at the relevant time, that Song was indeed Song Qinghua.

18 The appellant's previous counsel eventually filed an affidavit and the appellant filed an affidavit in response. The DPP also produced an affidavit filed by one Wong Pong Yen, the Corrupt Practice Investigation Bureau ("CPIB") Investigating Officer ("Wong") assigned to the appellant's case. In his affidavit, the appellant's previous counsel admitted that the appellant did initially take the position that he had gained actual knowledge of Song's real identity only in 2006. However, the appellant's previous counsel emphasised that the appellant had been properly advised and that he had never advised the appellant to plead guilty to any charge or to admit to the SOF as a "matter of convenience" as alleged by the appellant.[note: 2] The appellant's previous counsel maintained that all he did was to advise the appellant that his defence of "no knowledge" was unlikely to succeed but that it was open to him to claim trial to prove his innocence.[note: 3]

19 The appellant painted a very different picture in his response affidavit, reiterating that his previous counsel had advised him repeatedly to plead guilty despite being unequivocally informed that the appellant had only found out that Song Qi and Song Qinghua was one and the same person in 2006. According to the appellant, his previous counsel had never even mentioned the words "claim trial" or seriously advised him about this possibility.[note: 4] He also recounted an incident when he had explicitly informed his counsel that he did not want to admit the 5th charge on unauthorised access to computer material but claimed his previous counsel's response was that it was "not worth [his] effort to fight for this case, no matter how, [he] still had [*sic*] to serve the jail sentence … [i]t were better for [him] to admit everything early."[note: 5] When this charge (*ie*, the 5th charge) was read out to him, the appellant allegedly told the Judge that he had reservations to pleading guilty. Consequently, the Judge stood down the hearing for a few minutes for his previous counsel to explain matters to the appellant. His previous counsel then allegedly advised him that it was in "the best interest for [him] to plead guilty now, as these were [*sic*] the easy ways [*sic*] for [him] to get-out of [his] messy situation" and instructed him to tell the Judge that "I understood [*sic*] and PG to the charge".[note: 6]

20 Apart from the allegations against his previous counsel, the appellant also contended that he was a victim of a conspiracy by his former colleagues who wanted to remove him.[note: 7] He further insinuated that the CPIB officers handling his case had instructed him to change all references to

Song Qi in his earlier statements to Song Qinghua, and had selectively filtered out information during the statement recording procedure in order to "achieve the intended result".[note: 8] Finally, the appellant took issue with the fact that the Judge considered his previous position as a senior immigration officer to be an aggravating factor. He contended that the offences were not committed in his official capacity and it would therefore be unjust to link the sentence imposed with his official position.[note: 9]

21 The affidavit of Wong contained objective evidence that shed further light on this matter. Wong testified in his affidavit that "in the course of investigations, the [appellant] informed [him] that Song had revealed her previous identity of 'Song Qinghua' to him sometime in February 2004".[note: 10] Further, Wong testified that "Song also admitted that she had confessed to the [appellant] about her dual identity in late 2003 or early 2004", crucially corroborating the appellant's own admission on this point.[note: 11] Wong also recounted that during a search of the appellant's residence on 14 March 2006, he had discovered a Singapore Airport Terminal Services ("SATS") management diary for the year 2004 in a bookshelf with photocopies of the bio-data page of two PRC passports in the name of 'Song Qinghua' and a photocopy of a PRC identity card in the name of 'Song Qinghua' slotted among the pages.[note: 12] According to Wong, the appellant, who was present during the search, informed him that after Song Qinghua revealed her previous identity to him, he accessed the ICA computer system without authority in order to trace the reference number of the ICA file in relation to her repatriation in September 2001. He further admitted to retrieving the ICA file, photocopying the abovementioned documents and keeping them inside the 2004 SATS management diary.[note: 13] After further investigation with the ICA regarding the photocopied documents, Wong verified that the photocopied documents were the same as some of the documents contained in the ICA file and concluded that there was no official reason why Thong would have received them.[note: 14]

The appellant's denial of the requisite knowledge

Observations on going behind a plea of guilt

22 It is of course highly pertinent that the appellant had, with the advice of counsel, pleaded guilty in the District Court and admitted without qualification to the SOF. However, on appeal, he sought to challenge material parts of the SOF on the basis that he admitted to them only because of his previous counsel's advice. While the appellant relied on these complaints merely to substantiate why his sentence was manifestly excessive, his complaints undermined the very basis of his conviction. As mentioned above at [16], if the appellant had no knowledge of Song Qinghua's real identity in 2004, then his conviction on the charges (save the 25th charge and the 26th charge) could not stand.

23 The appellant's allegations necessarily raise the question of whether this court can and should go behind his plea of guilt and examine his allegations. Although he did not explicitly say so, the appellant was, in essence, asking this court to re-examine his plea of guilt because if his plea of guilt was accepted at face value, then his complaints should be dismissed outright. It is settled law that a court is never compelled to convict an accused person simply because he pleads guilty. The court has an inherent jurisdiction to reject a plea of guilt unless it is convinced that the accused understands the nature and consequence of his plea and intends to admit without qualification to the offence alleged against him (see *Ulaganathan Thamilarasan v PP* [1996] 2 SLR 534 at 541). There would be a serious injustice warranting criminal revision if the accused did not genuinely have the freedom to choose between pleading guilty and pleading not guilty (see *Yunani bin Abdul Hamid v PP* [2008] 3 SLR 383 ("*Yunani*") at [56]). If the plea is guilty but there is equivocation, the accused is in effect trying to plead not guilty and the court has no discretion but to record a plea of not guilty (see *Chen Chong v PP* [1967] 2 MLJ 130 at 132) and proceed with trial.

24 After a plea of guilt is accepted, the trial court can still re-examine the plea of guilt at any stage of the proceedings before it is *functus officio* (*ie*, until sentence has been passed or the matter has otherwise been finally disposed of: see *Ganesun s/o Kannan v PP* [1996] 3 SLR 560 ("*Ganesun*") at [14]), on an application by the accused to retract his plea. At this juncture, I would make a point that appears self-evident but which has not been judicially articulated explicitly in Singapore: where an accused seeks to retract his plea of guilt before the reading of the SOF, it should generally be allowed as of course (although the authorities are clear that the court has, even in such a situation, the discretion to refuse to allow retraction of a plea of guilt: see also Tan Yock Lin, *Criminal Procedure* (LexisNexis, 2008 at paras [1255]–[1300]). The reason for this is obvious. As explained in the Malaysian case of *Yeoh Eng Hock v Public Prosecutor* [1968] 1 MLJ 85 at 85:

> In a case where a plea of guilty has been made but before facts have been given, it is the usual practice to allow such plea to be withdrawn. That is an elementary rule because all that an accused person need to do is to refuse to admit to the facts or to enter a qualified plea by pleading other facts which would then be treated as amounting to claiming trial to the charge.

However, once an accused admits to the SOF, permitting the retraction of a plea of guilt is discretionary. The authorities are clear that this discretion must be exercised judiciously and for valid reasons (see *Public Prosecutor v Sam Kim Kai* [1960] MLJ 265 at 267 followed in *Ganesun* at [12]):

> Now, there is, no doubt, a discretion vested in a trial Court to allow an accused person, before sentence, to withdraw a plea of guilty and to substitute a plea of not guilty. But that discretion requires to be exercised judicially and for valid reasons. An accused person cannot be permitted merely at whim to change his plea, except upon *valid and sufficient grounds* which satisfy the Magistrate that it is *proper and in the interests of justice that he should be allowed to do so*. [emphasis added]

What would constitute valid and sufficient grounds will necessarily depend on the facts of each case; suffice it to say that the accused would need to adduce sufficient evidence to convince the trial judge his plea of guilt was either invalid or equivocal. Apart from allowing retraction of a plea of guilt, the court may also, on its own motion, re-examine a plea of guilt pursuant to s 180(*g*) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"), which states that the court may acquit the accused at any stage of the proceedings if, for reasons to be recorded, it considers the charge to be groundless.

25 After an accused is convicted and sentenced by a trial court (as in the present case), the only avenue through which an appellate court can re-examine his plea of guilt is by exercising its revisionary jurisdiction. This is because s 244 of the CPC provides:

> **When plea of guilty limited right of appeal.**
>
> **244.** When an accused person has *pleaded guilty* and been convicted by a District Court or Magistrate's Court on that plea there shall be *no appeal except as to the extent or legality of the sentence*. [emphasis added]

26 It is settled law that the revisionary powers of the High Court must be exercised sparingly and with great circumspection (see *Mok Swee Kok v PP* [1994] 3 SLR 140; *Yunani* at [49]). As declared in *Hong Leong Finance Ltd v PP* [2004] 4 SLR 475 ("*Hong Leong Finance*") at [14], the test laid down by the courts is whether the failure to exercise revisionary powers will result in a serious injustice. While what constitutes serious injustice is rightly left to the court's discretion, it must generally be shown that there is something so palpably wrong in the decision such that it strikes at the very essence of

the exercise of judicial power (see *Ang Poh Chuan v PP* [1996] 1 SLR 326, *Mohamed Hiraz Hassim v PP* [2005] 1 SLR 622). However, it has to be kept in mind that Parliament has conferred this power on the High Court so as to ensure that no potential cases of serious justice are left without a meaningful remedy or real redress. A court would fail in its constitutional duty to oversee the administration of justice if it remained impassive and unresponsive to what might objectively appear to be a potentially serious miscarriage of justice (see *Yunani* at [49]).

27 In light of the appellant's plea of guilt, this court could only take cognisance of his complaints through its revisionary jurisdiction. As held in *Ng Kim Han v PP* [2001] 2 SLR 293 at [15] and *Yunani* at [43], the fact that the appellant had pleaded guilty on his own accord is not a bar to the exercise of revisionary power. Neither is it fatal that no petition for criminal revision was filed since s 268 of the CPC expressly provides that the High Court may exercise its power of revision in any case which has come to its knowledge (see *Chen Hock Heng Textile Printing Pte Ltd v PP* [1996] 1 SLR 745). The crucial question is whether the pressures faced by the appellant to plead guilty and/or the doubts raised as to the truth of the appellant's guilt amounts to "serious injustice" which would warrant an exercise of the High Court's power of revision (see *Yunani* at [50]). As held in *Yunani* at [56], serious injustice would be occasioned if the pressures faced by an accused were such that he, in effect, cannot make a voluntary and deliberate choice. Even where a plea of guilt is made without any operative pressures on the accused, there would be a serious injustice if the *additional* evidence before the reviewing court raised serious doubts about the guilt of the accused.

28 It is therefore trite that this court *can* take cognisance of the appellant's complaints through its revisionary jurisdiction although this does not answer the question of when the court *should* take cognisance of such complaints. There is a distinction between the court's revisionary jurisdiction and an exercise of its revisionary powers (for example, to set aside a conviction or order a re-trial). In my view, the court should first consider whether the appellant's complaints, if true, would *prima facie* merit an exercise of the court's revisionary powers (*ie*, that the failure to exercise revisionary powers would result in serious injustice). If they would, then the court *should*, in its revisionary *jurisdiction*, take cognisance of the complaints and direct a further investigation to determine the veracity of the complaints. There is no necessity for the accused, at this stage, to establish the truth of his complaints. Evidence of the truth of his complaints would only be relevant to the subsequent determination of whether it is appropriate for the court to *exercise* its revisionary *powers*. Nevertheless, if an accused's complaints were *inherently unbelievable or unsupportable on the facts*, any investigation into them would be an arid exercise in futility. In such a situation, the court *should not* take cognisance of his complaints as there would be no compelling reason to unnecessarily waste court time and resources.

29 As I observed at [1], while genuine grievances must never be buried, scurrilous and vexatious aspersions against counsel cannot be tolerated. In the words of Yong Pung How CJ in *Lee Eng Hock v PP* [2002] 1 SLR 364 at [10], "it is undesirable to allow defence counsel to be made convenient scapegoats, on the back of whom 'backdoor appeals' are carried through." The need to deter accused persons from launching baseless allegations against counsel in a desperate last-ditch attempt at 'backdoor' appeals is a relevant consideration when the court (even at the appellate level) decides the appropriate sentence to impose. I would emphasise, however, that the court should not punish an appellant merely for wasting court time and resources. After all, the court has the exalted role of protector of the public's rights and interests and is duty-bound to uphold justice.

The appropriate procedure when an appellate court investigates allegations of this nature

30 At this juncture, it may be helpful if I lay out the appropriate procedure which an appellate court might observe when investigating allegations of this nature. When allegations (of pressure or of

lack of due diligence) against previous counsel are made on appeal, it is of first importance to ensure that the appellant *intends* to make specific allegations and to *ascertain the precise contents of these allegations*. An accused ought to file an affidavit setting out his allegations if they are numerous and involved. If the appellant's allegations are not involved and the court can clearly distil their essence, the filing of an affidavit may not always be necessary since the appellant would have made his allegations in open court and on record. In the present case, I was able to ascertain the crux of the appellant's complaints, which was that, contrary to the SOF, he had only come to know of Song's real identity in 2006 (as opposed to 2004) but had pleaded guilty because he was advised to do so by his previous counsel.

31 Although I did not order the appellant to file an affidavit setting out his allegations, I directed that he be allowed to respond, by way of affidavit, to his previous counsel's version of the story should that counsel accept my invitation. In that way, there was, on affidavit, evidence of both the appellant's allegations as well as his previous counsel's response to them.

32 After ascertaining the content of the appellant's allegations, the appellant's previous counsel *must be given an opportunity to respond*. Any allegation of pressure or lack of due diligence on the part of defence counsel is inevitably grave as it involves an attack on counsel's integrity and/or professionalism, hallowed virtues inextricably linked to his standing within the community and with the courts. There is also the corresponding need to defend the reputation of the profession in general, as any alleged misconduct of one of its members often stains the image of the profession as a whole. Thus, counsel *must* be given a chance to clear any alleged slur on his integrity and/or professionalism, even if such a slur is only made indirectly. While there ought to be no hard and fast rule about the modalities on how the previous counsel should respond, I was of the view that the filing of an affidavit would be preferable as this would provide the court with sworn/affirmed evidence, which could then be evaluated as to whether there was any basis supporting the appellant's allegations. In contrast, significantly less weight may be attached to previous counsel's version of the facts if he decides to respond by way of unsworn evidence, for example, by way of letter.

33 In this regard, I also took into account that if the appellant had been represented (by new counsel) and had filed an affidavit setting out his allegations against previous counsel, new counsel (for the appellant) would be obliged to give his previous counsel an opportunity to answer the appellant's allegations pursuant to r 71 of the Legal Profession (Professional Conduct) Rules (Cap 161 R 1, 2000 Rev Ed). Rule 71(2) further obligated this answer to be included in the affidavit that the appellant was to file:

> **Allegations against another solicitor**
>
> 71.—(1) An advocate and solicitor whose client has given instructions to include in an affidavit to be sworn whether by the client or his witness, an allegation made against another advocate and solicitor, shall give the other advocate and solicitor an opportunity to answer the intended allegations.
>
> (2) In such a case, the answer of the other advocate and solicitor shall be included in the affidavit before the same is deposed to, filed and served.

It would appear however, that as long as the accused is unrepresented or does not file an affidavit, r 71 would not be triggered and previous counsel would not have any strict legal right to answer the allegations made against him. But why should previous counsel not have an opportunity to respond to serious allegations against him simply because the accused is unrepresented or does not file an affidavit when he would possess such a right if the accused was represented and had filed an

affidavit? Thus, in my view, even when an appellant is unrepresented or does not file an affidavit, previous counsel should, barring exceptional circumstances, be accorded every reasonable opportunity to respond to any allegations of pressure or lack of due diligence that may be made against him for the reasons I have outlined in [32].

34 On a tangential point, I noted that the thrust of the issue raised by the appellant's allegations was not only that pressure or lack of due diligence of his previous counsel directly vitiated his plea of guilt, but rather that he did not have the requisite *mens rea* to make out the various charges and yet, his lawyer had advised him to plead guilty. In cases of this nature, the court would be better placed to determine whether an exercise of its revisionary powers is warranted if it has before it *objective evidence which directly answers the appellant's allegations*. This is why I directed the DPP to inquire further into the matter and to place before the court any objective evidence which proved that the appellant knew in 2004 that Song was Song Qinghua. This was important because, if the objective evidence showed that the appellant had knowledge in 2004 of Song's real identity, then the appellant's complaints would have no substance and any inquiry into the conduct of his previous counsel would be quite irrelevant to the determination of *the accused's* case (although such an inquiry may still be undertaken to clear any doubts as to the integrity or professionalism of previous counsel).

My decision on the appellant's denial of the requisite knowledge

The objective evidence showed that the appellant knew, in 2004, that Song was Song Qinghua

35 After perusing the various affidavits, I was left in no doubt that the appellant indeed had knowledge, in 2004, that Song was Song Qinghua. In this respect, the affidavit of Wong was particularly illuminating. As I have set out at [27], Wong had testified that the appellant had admitted to him that Song had confessed her dual identity to him (*ie*, the appellant) in early 2004. Wong also testified that Song told him the same thing, thus unshakeably corroborating the appellant's admission. There was no reason to disbelieve Wong's evidence. In *Registrar of Vehicles v Komoco Motors Pte Ltd* [2008] 3 SLR 340 ("*Komoco*"), the Court of Appeal observed at [38] that:

> In the absence of cross-examination, the only justification for not believing a sworn statement, especially one from a state official performing an administrative function, is if documentary or other oral evidence is adduced to disprove it.

Although *Komoco* was concerned with a state official performing an administrative function, I was of the view that the reasoning in *Komoco* should generally apply to a sworn statement by a police officer as well. One ought to be slow to reject the sworn evidence of a public servant entrusted with upholding the law unless cogent evidence to the contrary is produced. Further, as in *Komoco*, it was open to the appellant to cross-examine Wong on his evidence. This, the appellant chose not to do. In fact, he did not even adduce any evidence, apart from bare allegations, either in his affidavit or before me at the adjourned hearing that materially contradicted Wong's evidence. Nor did he advance any plausible arguments on why Wong might want to frame him.

36 Apart from the various admissions, Wong also recounted the discovery of photocopies of the bio-data page of two PRC passports in the name of 'Song Qinghua' and a photocopy of a PRC identity card in the name of 'Song Qinghua' (which were subsequently verified to be the same documents in the ICA file) in the appellant's residence. I agreed with the DPP that there was no legitimate reason why the appellant would have these photocopied documents or have kept the same in his home. In his affidavit, Wong testified that the appellant had explained to him how he came into possession of these documents. The appellant's explanation was that after he found out about Song's identity in

2004, he accessed the ICA computer system, retrieved her ICA file, photocopied the various documents, and later kept them inside the 2004 SATS management diary. Although the appellant tried to argue, at the adjourned hearing, that he had only photocopied the documents in 2006, for the reasons given at [35], I saw no reason to disbelieve Wong's evidence. Further, it would be most improbable that these documents were found in his *2004* management diary if he had only photocopied them in *2006*. In the circumstances, I was of the view that Wong's evidence settled all doubts about whether the appellant indeed knew, in 2004, that Song was Song Qinghua. Although this finding was sufficient to dispose of the appellant's complaints, I will, for the sake of completeness and out of deference to the previous counsel's reputation, proceed to consider the appellant's allegations against previous counsel.

The allegations against previous counsel were without basis

37 On the issue of pressure by counsel to plead guilty as a basis for criminal revision, the case of *Chua Qwee Teck v PP* [1991] SLR 857 ("*Chua Qwee Teck*") is instructive. In that case, the offender pleaded guilty and admitted, without qualification, to the statement of facts. He subsequently filed for revision, claiming, *inter alia*, that his counsel put him under pressure to plead guilty and had advised him erroneously that if he pleaded guilty and made restitution, the court would only impose a fine. Chan Sek Keong J (as he then was) considered the English cases of *R v Turner* [1970] 2 QB 321 ("*Turner*") and *R v Peace* [1976] Crim LR 119 ("*Peace*") and concluded that the applicable principle was *freedom of choice* (see *Chua Qwee Teck* at [862]–[863]). Chan J dismissed the offender's petition as he was of the view that the offender had the requisite freedom of choice (at [865]–[866]):

> Even if the petitioner had been expressly told by his counsel that there had been such an arrangement, why was there *no alternative to pleading guilty*? There was no threat or pressure on him to plead guilty since he was not told and did not think that the alternative was a heavier sentence if he were found guilty. Since he had maintained his innocence all along, and this is confirmed by his own counsel, he could have rejected his counsel's advice and fought on in the hope of obtaining an acquittal. He could have discharged his counsel for lacking confidence in putting up a successful defence.
>
> In my view, the petitioner has confused an inducement with a threat or pressure. Paragraph 9 must mean that the petitioner was induced into pleading guilty because of the arrangement. That should have been the ground for an application to set aside the plea of guilty and not the ground of denial of his free choice. Since, in fact, there was no such arrangement and the petitioner says that he pleaded guilty because he thought that there was such an arrangement, it must follow that the plea of guilty was self-induced. This is confirmed by his own testimony as follows: "I was thinking that to avoid the trouble of coming to court so many times that if I pleaded guilty I could go back to my job … I thought by paying a fine, the matter would rest there and so I agreed to plead guilty". In my view, the petition was misconceived.
>
> [emphasis added]

To summarise, Chan J was of the opinion that the offender was under no threat to plead guilty since he did not think the alternative was a heavier sentence, or he could have rejected his counsel's advice (and discharge counsel if necessary), and that his plea of guilt was self-induced in light of the fact that he gave testimony to the effect that he chose to plead guilty to "avoid the trouble of coming to court so many times" and so that "the matter would rest there".

38 In *Lee Eng Hock v PP* [2002] 1 SLR 364 ("*Lee Eng Hock*"), Yong Pung How CJ touched on an

important policy consideration relevant in cases where allegations of pressure by counsel are made (at [10]):

> The second issue related to policy. According to the headnote to *R v Peace* [1976] Crim LR 119:
>
> > It would be a serious matter if it were accepted that when counsel gave strong advice indicating the prospect of being found guilty and the alternative of pleading guilty it could be said that the plea was forced on the defendant. It was a question of fact in every case.
>
> If the conduct of defence counsel could be so easily challenged, the chilling effect on the criminal bar would be immense.

39 It is clear that the approach to allegations of pressure by counsel centres on whether an accused had the freedom to choose between pleading guilty and claiming trial. At the same time, policy considerations (as outlined above at [38]) dictate that a court will be slow to determine that defence counsel had in fact pressured an accused person into pleading guilty. As noted in *Lee Eng Hock* at [10], "there may in some cases be a thin line between dispensing credible legal advice and pressurising one's client to plead guilty". In this regard, it appears to me that the first guideline laid down in *Turner* (at 326) is a useful guide for both judges and counsel to determine which side of the line a specific piece of advice would fall:

> 1. Counsel must be completely free to do what is his duty, namely to *give the accused the best advice he can and if need be advice in strong terms*. This will often include *advice that a plea of guilty, showing an element of remorse, is a mitigating factor* which may well enable the court to give a lesser sentence than would otherwise be the case. Counsel of course will *emphasise that the accused must not plead guilty unless he has committed the acts constituting the offence charged.* [emphasis added]

I would point out that the counsel in *Turner* had in fact advised the appellant to seriously consider changing his plea to guilty, and had expressed his personal opinion of what could happen if the appellant decided to claim trial. The court in *Turner* was satisfied that this was acceptable and that counsel had presented his advice conscientiously but for the fact that counsel had seen the judge just prior to giving his personal opinion, and it had been thus conveyed to the appellant that counsel was expressing the court's opinion.

40 In a similar vein, the learned authors of Richardson, *Archbold Criminal Pleading, Evidence and Practice 2008* (Sweet & Maxwell, 2008), with reference to cases such as *R v Hall* 52 Cr App R 528, *R v Inns*, 60 Cr App R 231 and *R v Goodyear* [2005] 2 Cr App R 20, observed at para 4-104 that:

> [I]t is the clear duty of defending counsel to assist the defendant to make up his mind by *putting forward the pros and cons of a plea*, if need be in forceful language, so as to impress on the defendant what the result of a particular course of conduct is likely to be. [emphasis added]

41 It is undisputed (from both the appellant's and his previous counsel's affidavits) that the appellant did initially tell his previous counsel that he only came to knew of Song's true identity in 2006. However, it does not follow that the appellant's previous counsel should not then advise him on the desirability of pleading guilty and the pros and cons of such a plea (see discussion at [39] and [40]). On this point, I actually found that the appellant's previous counsel's account of the advice he gave was largely uncontradicted by the appellant. The appellant's previous counsel stated, in his affidavit, that he advised the appellant that[note: 15]:

(a) He was charged for the offence of "abetting Song Qinghua". She was the principal offender. She must have implicated him in these offences.

(b) As a very senior immigration officer of his standing, he failed to exercise "due diligence".

(c) The court would very likely make a finding of fact based on the inferences drawn that he had knowledge, particularly in view of his close association with Song since early 2003.

(d) He had in fact done a search on Song in 2004 and his explanation for the search was not credible, especially as he would have to explain the remarkable coincidence at searching for the particulars of the very person he was associated with.

(e) In the circumstances, his defence of "no knowledge" was unlikely to succeed.

There was nothing wrong with the advice given by the appellant's previous counsel as recounted above. In fact, it was conscientiously given. It is the duty of defence counsel to inform, as the appellant's previous counsel did, his client of the strength of his case, the possible inferences and findings the court might make, as well as the chances of his defence(s) succeeding.

42 The appellant alleged, in his affidavit, that his previous counsel had told him that it was very difficult to succeed if he decided to "fight the case". Instead, his previous counsel advised him to plead guilty, indicating that a timeous plea of guilt would indicate his remorse and that this would be the best way for him to move forward.[note: 16] The appellant's affidavit went on to say that:

> I told him that should this be the case, I would like to minimize the damages as far as possible. After some discussion, he told me that he would make a representation to Attorney-General's Chambers (AGC) to request them to proceed on the less number and severity of changes [*sic*], on condition that I had to plea [*sic*] guilty on the first opportunity. Since he was the expert in this field, Any [*sic*] layman would agree with the expert.

43 Even on the appellant's account of events, I was not satisfied that his previous counsel had acted improperly or that the appellant had been unduly pressured into pleading guilty. As held in *Turner* (see [39]), it was perfectly legitimate for the appellant's previous counsel to advise him to plead guilty, that his plea of guilt would likely be a valid mitigating factor, and that his defence would be unlikely to succeed. In fact, the above extract clearly shows that the appellant *chose* to plead guilty of his own accord. It could not be said that the appellant had "no choice but to plead guilty" (see *Chua Qwee Teck* at [21]). As held in *Peace*, the mere fact that an accused pleads guilty reluctantly after receiving strong advice from counsel does not make his plea a nullity. His plea is only a nullity if, when he makes it, he has already *lost the power to make a voluntary and deliberate choice*. On the evidence before me, I was more than convinced that the ultimate and free choice of whether to plead guilty rested with the appellant.

44 One serious point of divergence between the appellant's account and his previous counsel's account was on whether the appellant's previous counsel had advised him that he could claim trial. According to the appellant, "[a]ll this while, [his previous counsel] had not mentioned to [him] a word of "claim trial" at all".[note: 17] In my view, it was unnecessary for me to make a finding in this respect. The appellant was no babe in the woods, and would undoubtedly have been aware of the fact that he could claim trial. In his affidavit, the appellant states that he "told [his previous counsel] that [he] would like to fight the case as far as possible".[note: 18] This is but one reference from his affidavit which goes towards showing that the appellant was clearly alive to the option of claiming trial. In his affidavit, the appellant also makes various allegations that his previous counsel, the CPIB

as well as his colleagues were all involved in a shameful conspiracy to "fix" him. I will not legitimise these deplorable allegations further by condescending into details. It would suffice for me to say that the appellant did not produce any evidence or advance any compelling arguments to support these baseless allegations.

The appeal against sentence

45 I now proceed to deal with the appellant's appeal against sentence. In his Skeletal Argument, the appellant contended that the sentence imposed was manifestly excessive because:

(a) the sentence was based on an inaccurate statement of facts;

(b) the Judge attached undue weight to the fact that the offences were committed when he was an immigration officer; and

(c) the Judge incorrectly rejected the mitigating factors raised.[note: 19]

The appellant's allegations regarding the inaccurate statement of facts essentially relate to his denial of knowledge as to Song's real identity at the material time. In light of my finding (at [35]–[36]) that the appellant knew, in 2004, that Song was Song Qinghua, the first ground of appeal necessarily fails.

Enhanced need for deterrence because the appellant was a senior immigration officer

46 The appellant's second ground of appeal was that the Judge attached undue weight to the fact that he was a senior immigration officer at the time the various offences were committed. He argued that his position as an immigration officer should not have been regarded as aggravating because the offences had "nothing to do with [his] official position" and were not committed in the course of his duties.[note: 20] This argument is completely misconceived, as will be evident on an analysis of the decision in *PP v Loqmanul Hakim bin Buang* [2007] 4 SLR 753 ("*Loqmanul*").

47 The respondent in *Loqmanul* was an auxiliary police officer who, while clad in full CISCO official gear, removed three DVD players from a supermarket store. When confronted by a supervisor of the supermarket, the respondent was uncooperative and emphasised that he was a police officer. He subsequently put up a struggle when requested to accompany the supervisor to the supermarket's office. While being escorted through the combined efforts of five staff members, the respondent repeatedly warned the staff to be careful. On the prosecution's appeal, I was of the view that a deterrent sentence was warranted and enhanced the sentence, *vis-à-vis* that particular charge, from 10 weeks' imprisonment to 18 months' imprisonment. The rationale underlying the imposition of a deterrent sentence was the enhanced need for general deterrence where an accused was an auxiliary police officer (see *Loqmanul* at [34], [35] and [49]). In particular, I noted at [37] that:

> I should stress in no uncertain terms, however, that it ***would not be the corollary of such a principle that an accused's status as a police officer must, as a matter of principle,*** *only* ***be relevant in instances where the offences were,*** *strictly speaking,* ***committed in the commission or discharge of his duties***. To appreciate why this is so, it is necessary to closely scrutinise, and to distil, the precise rationale underlying the principle that the status as a law enforcement or security officer could count as an aggravating factor. To that end, it warrants reminder that the ***rationale underlying the imposition of a deterrent sentence where an accused party is a police officer or an auxiliary police officer is the need to reflect the damage that may be inflicted on the institutional credibility of security agencies, damage***

> ***to the standing of their officers and the court's concern about the abuse of the trust and responsibility that has been reposed in a police officer***. Needless to say, such a sentence also serves as a salutary reminder to other serving officers, that transgressions by them will not be condoned. [emphasis in original; emphasis added in bold italics]

It cannot be seriously disputed that a deterrent sentence may still be imposed on an accused because of his official position even if the offences were not committed in the discharge of his duties. The damage inflicted on the institutional credibility of security agencies and the standing of their officers does not only depend on whether the officer committed the offences in the discharge of his official duties. Rather, as I alluded to in *Loqmanul* at [40]:

> As earlier explained, the distinction between offences committed within the scope of a uniformed officer's official duties and those extrinsic to such duties is not founded upon a mechanical assessment *vis-à-vis* the officer's scope of duties. ***The*** *real* ***distinction*****, as alluded to earlier,** ***is whether there has been an abuse of the trust and reliance placed on the officer concerned in the commission of the crime in question***. Just as it could not be said that every offence committed during the course of duty would invariably be an abuse of the trust and authority that is reposed in such officers, the converse, namely, that any offence that is *not* committed during the course of duty would *not* involve an abuse of the trust and authority reposed in these officers, is plainly not correct. [emphasis in original; emphasis added in bold italics]

48 Thus, the real question is not whether the appellant committed the offences in the course of his official duties but whether the appellant abused the trust and reliance reposed in him by the ICA when he committed the various offences. To my mind, the answer to this question must surely be in the affirmative. As a senior immigration officer, the appellant was under an uncompromisable duty to report Song to the authorities once he learnt of her true immigration status. Not only did he overlook the breaches of the immigration laws he was duty-bound to uphold, he even abetted the commission of some of the offences and committed other offences himself. The appellant did not cease to be an immigration officer because these events took place outside the course of his official duties. His actions struck at the heart of the ICA's core functions in the administration and enforcement of immigration laws in Singapore. As a consequence of his disgraceful conduct, the ICA's credibility was tarnished and public confidence that all ICA officers would diligently and uncompromisingly discharge their duties has been to an extent undermined. In these circumstances, I had no doubt that the appellant had flagrantly abused the trust and reliance placed in him *qua* immigration officer.

49 The fact that the appellant was an immigration officer, as opposed to being a police officer, is immaterial. As I made clear in *Loqmanul* (at [79]), there is no cogent reason why the approach of placing primacy on the value of deterrence as a sentencing consideration should not apply to a civil defence officer who steals from a vulnerable victim in an ambulance or to a soldier who uses his position of authority and trust to commit theft within his army camp. This reasoning applies equally, if not with more force, to an immigration officer who is complicit in breaches of the immigration laws he is supposed to be enforcing. As Yong CJ incisively observed in *S Balakrishnan v PP* [2005] 4 SLR 249 at [143], where public personnel are willing to commit a "complete betrayal of their offices" in falling below the level of conduct that should be expected of them, the courts should not hesitate to show disapproval and aversion for such egregious conduct by passing a sufficiently significant term of imprisonment. In the circumstances, I was of the view that the Judge had correctly considered the appellant's official position as an aggravating factor.

Judge was correct in attaching little weight to the alleged mitigating factors

50 The appellant alleged that the Judge did not attach sufficient weight to his prior clean record

and the financial hardship that he is facing as a result of his conviction. There is no merit in these allegations. Although it is true that an offender's lack of prior convictions can be a mitigating factor, the discretion remains with the court to refuse to consider someone as a first-time offender if he has been charged with multiple offences (see *Wong Tiew Yong v PP* [2003] 3 SLR 325 at [56]). In the present case, the appellant had committed a series of offences stretching from November 2003 all the way to March 2006. As such, I did not think it could be said that the appellant was a first-time offender deserving of a reduced sentence.

51 With regard to his loss of employment, retirement benefits and the ensuing financial hardship, the short answer is that the appellant had only brought all this upon himself. On the facts of the present case, there were no persuasive considerations justifying a reduction on the ground of financial hardship.

Reasons for enhancement of sentence

52 In light of the severe damage inflicted on the reputation of the ICA and the enhanced need for general deterrence (as outlined at [45]–[48]), I was actually of the view that the Judge had been charitable to the appellant and that his sentence of 24 months' imprisonment was in fact manifestly inadequate. Apart from this, the other factor that influenced my decision to enhance the appellant's sentence to an imprisonment term of 33 months was that his conduct during the appeal evidenced a complete lack of remorse. It is to this factor that I now turn.

The appellant's conduct on appeal evidenced a complete lack of remorse

53 It is undisputed that the Judge imposed the sentence of 24 months' imprisonment after "giving a discount for the personal mitigation, *in particular, the plea of guilt*" (see [39] of the GD). The jurisprudential basis for a reduction in sentence for timeously-effected guilty pleas was explored in *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 ("*Angliss*"), where the court adopted a remorse-based approach. As discussed in *Angliss* at [53], the justification for a reduction of sentence on a remorse-based approach is two-fold:

> In respect of the remorse-based approach, two reasons have generally been proffered for placing a premium on and encouraging contrition. The first is that an offender who demonstrates by his plea that he is ready and willing to admit his crime enters the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary: see *United States v Henry* 883 F 2d 1010 (11th Cir, 1989) at 1012, citing *Brady v United States* 397 US 742 (1970) at 753. The second and broader rationale is that there are significant, meaningful and profound effects that a genuine, remorseful apology can engender. As Prof Stephanos Bibas and Prof Richard A Bierschbach argue in their article, "Integrating Remorse and Apology into Criminal Procedure" (2004) 114 Yale L J 85 ("Bibas and Bierschbach") at 109–110, "crime and punishment are as much about social norms, social influence and relations between persons as about individual blame and state-imposed suffering". When a person commits a crime, there is not only a practical, tangible harm that is produced; there is also a violation of society's norms and expectations. This creates an imbalance in the relationship between the offender and his victim as well as society. An apology, on the other hand, recognises this "relational concept" of crime and seeks to "put right" or recalibrate this imbalance: see Bibas and Bierschbach at 110. By apologising, an offender not only disavows his wrongdoing but seeks reconciliation and re-affirms the social values he has violated: see Bibas and Bierschbach at 113. "Contrite offenders … do not just apologize *for* something. They also apologize *to* someone - their victims, their communities, their family and their friends": see Bibas and Bierschbach at 114. It is primarily because of these inherently powerful messages conveyed

through an apology that our law encourages offenders to plead guilty by awarding a discount when they do. [emphasis in original]

54 Pursuant to the holding in *Angliss* (at [77]), a plea of guilt will only have mitigating effect when it is motivated by *genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice*. The Judge must have taken into account the appellant's plea of guilt on the basis that it signified remorse on the appellant's part. However, the appellant's conduct on appeal is a convincing testament to the contrary. As I noted at [22] and [23], the appellant's denial of knowledge of Song's real identity in 2004 was, in effect, an indirect attempt to retract his plea of guilt. In light of the objective evidence that unambiguously shows the appellant's knowledge, in 2004, of Song's real identity, the only inference I could draw was that the appellant's original plea of guilt was *not* motivated by genuine remorse or contriteness. In fact, the appellant's own version of the facts, on appeal, was that he pleaded guilty as a "matter of convenience" and that he was convinced (by his previous counsel) that this was the best way to get out of a messy situation. Therefore, I was of the view that any discount given by the Judge for the appellant's plea of guilt was unwarranted since his plea was not motivated by genuine remorse or contriteness, but by tactical reasons. The appellant's sentence should thus be enhanced correspondingly. In *Fu Foo Tong v PP* [1995] 1 SLR 448 at [13], a guideline (which does not constitute a hard and fast rule) was established that a court has the discretion to reduce the sentence imposed by one-quarter to a third where a timeous plea of guilt is made. In line with this guideline, I was of the view that the appellant's aggregate sentence should be increased by at least one-quarter to a third.

55 However, the appellant's lack of remorse was not limited to his apparently insincere plea of guilt; it was also manifested in the allegations that he launched against his previous counsel, the CPIB, and his former colleagues. As discussed at [41]–[44], these allegations are simply baseless. In my view, he is blaming all and sundry for his unhappy predicament. The truth of the matter is that he is the sole conscious author of his present misfortune. In spite of the enormity of damage he has caused to the credibility of the ICA by his irresponsible actions, the appellant is still unwilling to take responsibility for what he has done. In particular, as I have mentioned at [29], his vexatious allegations against defence counsel were troubling as they concerned the professional integrity of counsel. When an offender attempts to make defence counsel his scapegoat by casting spurious aspersions on counsel's integrity and professionalism, I am of the view that this is clear evidence of a complete lack of remorse.

56 It has been categorically established in *Angliss* that genuine remorse and contrition is a valid mitigating factor. The converse is very often also true: lack of remorse is, in many cases, a relevant aggravating factor. While not articulated at length, the Singapore courts have recognised a lack of remorse as an aggravating factor. In *Wan Kim Hock v PP* [2003] 1 SLR 410, Yong CJ noted at [30] that:

> Lastly, I noted that in mitigation, it could only be said of the appellant that he had no previous antecedents. This factor, while normally forceful, must be *balanced against the numerous aggravating factors, such as* the appellant's failure to make restitution, *his lack of remorse throughout the entire trial* … [emphasis added]

In other cases such as *Siew Yit Beng v PP* [2000] 3 SLR 773 at [25] and *Sarjit Singh s/o Mehar Singh v PP* [2002] 4 SLR 762 at [16], the trial judges had explicitly considered "lack of remorse" as an aggravating factor. The subsequent appeal and petition for revision in each case were dismissed without comment on this issue, suggesting that the High Court had been of the view that the trial judges in both cases did not err in considering "lack of remorse" to be an aggravating factor. To my mind, taking into consideration a lack of remorse as an aggravating factor is entirely consistent with

the four pillars of sentencing laid out in *Chua Tiong Tiong v PP* [2001] 3 SLR 425, namely: retribution, rehabilitation, deterrence and prevention.

57 The concept of retribution operates on the commonsensical notion that the punishment meted out to an offender should reflect the degree of harm and culpability that has been occasioned by such conduct. This is premised on the belief that "the societal interest is expressed in the recognition that typical crimes are wrongs, for which public censure through criminal sanction is due" (see Andrew Von Hirsch and Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) at p 4). As observed in *Loqmanul* at [47], the inevitable corollary of the retribution principle is the proportionality principle that demands that offenders who commit more serious offences be punished more severely than those who commit less serious offences. According to Prof Andrew von Hirsch in his article "Deservedness and Dangerousness in Sentencing Policy" (1986) Crim L R 79–91 at 85, the seriousness of crime is a double-pronged fork, the first prong of which relates to the degree of harmfulness of the conduct. Applying this first prong, the degree of harmfulness of an unremorseful offender's conduct is amplified because the violation of society's norms and expectations persists through the offender's refusal to take responsibility for his wrongdoing. Further, as explained in Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) at para 3.3.5, according to retributive theory, sentences communicate official censure or blame, the communication being chiefly to the offender but also to the victim and society at large. More severe censure will be warranted where there is a lack of remorse as there will be a greater need to communicate to the offender, the victim, and society at large that such conduct is unacceptable and will not be tolerated.

58 With regard to the second principle, it is self-evident that a remorseful offender would be more amendable to rehabilitation than an unremorseful one. As observed by the court in *Jennings v State* 664 A. 2d. 903 (1995), a remorseful offender may receive a reduced sentence as he has taken the first step toward rehabilitation by accepting responsibility for his crime. Indeed, an offender who is remorseful enters the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary (see *United States v Henry* 883 F. 2d.1010 (1989)). The converse holds true as well. As observed in *PP v Goh Lee Yin* [2008] 1 SLR 824 at [97], "[r]ehabilitation seeks to *alter the values of the offender so that he or she no longer desires to commit criminal acts*". Undoubtedly, a longer period of incarceration than ordinarily necessary will be required to alter the values of an offender who feels he has done nothing wrong.

59 Similarly, the principles of specific deterrence and prevention dictate that unremorseful offenders be punished more severely. An unremorseful offender is obviously more likely to re-offend since he does not see anything inherently wrong in what he has done. A harsher punishment thus needs to be visited on him to instil in him the fear of re-offending through the potential threat of re-experiencing the same sanction previously imposed (see *PP v Law Aik Meng* [2007] 2 SLR 814 at [21]). The principle of prevention is concerned with the protection of the public through incapacitation of dangerous or persistent offenders (see *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at p 71). In this respect, lack of remorse has consistently been cited as a relevant factor in a determination on whether preventive detention should be ordered (see *Heng Jong Cheng v PP* [1999] 2 SLR 345; *PP v Perumal s/o Suppiah* [2000] 3 SLR 308 at [22]; *Tan Ngin Hai v PP* [2001] 3 SLR 161). By the same token, even where preventive detention is not being considered, a lack of remorse must also be logically relevant (although admittedly to a lesser extent) since it will be to society's benefit for an offender to be incapacitated until he is fully rehabilitated and is unlikely to re-offend. As discussed at [57], rehabilitation would likely take a longer period for an unremorseful offender, and the principle of prevention dictates that he be incarcerated accordingly.

60 A number of states in the United States have accepted that a lack of remorse may warrant a harsher punishment (see *State v Manzanares* 866 P. 2d 1083, 1092 (Kan. Ct. App. 1994); *State v VanZee* 547 N.W. 2d 387, 392-93 (Minn. Ct. App. 1996); *State v Baldwin* 304 N.W. 2d 742, 752 (Wis. 1981); *State v Richardson* 923 S.W. 2d 301, 322 (Mo. 1996); *Saenz v State* 95 Md. App. 238, 250-51, 620 A. 2d 401, 407 (1993); lack of remorse is also specified as an aggravating factor under the sentencing guidelines in the State of Delaware (see *Delaware Sentencing Accountability Commission Benchbook 2008*)). It should be pointed out, though, that there has been no shortage of academic criticism of these decisions (see for example, Bryan H. Ward, "Sentencing Without Remorse" 38 Loy. U. Chi. L.J. 131 (2006); Lisa F. Orenstein, "Sentencing Leniency may be denied to Criminal Offenders who fail to Express Remorse at Allocution" 56 Md. L. Rev. 780). These criticisms generally regard two matters: first, that it is difficult to ascertain whether an offender really lacks remorse; and second, that an accused's protestations of innocence and the exercise of his right to claim trial should not prejudice him.

61 I agree that it will often not be easy to discern whether a particular offender actually lacks remorse. It is axiomatic that an offender cannot be punished more severely simply because a judge suspects or even believes, on a balance of probabilities, that he may not be remorseful. However, I am of the view that an offender's lack of remorse can be a valid aggravating factor if the court is satisfied *beyond reasonable doubt* that the offender is unremorseful. Although a court should be slow to infer a lack of remorse, it should not hesitate to do so in a clear case. I would caution that an accused *should not* be penalised for exercising his right to claim trial or for maintaining his innocence at trial or for appealing against a decision. As noted in *Kuek Ah Lek v PP* [1995] 3 SLR 252 at [66]:

> An accused is entitled to claim trial. *Although an accused who pleads guilty may usually expect a discount, it does not follow that the court can impose a heavier sentence merely because he had elected to contest the charges instead. The mere fact of claiming trial is not an aggravating circumstance.* As the appellant had not unnecessarily prolonged his trial, there was no aggravating circumstance at all. [emphasis added]

62 However, it has been said that an offender may be viewed as being unremorseful where he takes his objections too far, and persists in creating a spectacle in court (*PP v Nyu Tiong Lam* [1996] 1 SLR 273 at [19]). In my view, an offender's conduct on appeal may also ground a finding of a lack of remorse. While an appeal against conviction should certainly not, in itself, be taken as a sign that the offender is unremorseful, a frivolous attempt to re-open a plea of guilt voluntarily entered is one of the clearest indications of a lack of remorse. Apart from his belated attempt to re-open his plea of guilt, the appellant further demonstrated his complete lack of remorse by launching a myriad of baseless allegations against his previous counsel, his former colleagues at the ICA, and the CPIB. In these circumstances, I was left with no doubt that the appellant was utterly unremorseful and deserved a more severe sentence.

Conclusion

63 For the above reasons, I dismissed the appellant's appeal and substituted his earlier sentence of 24 months' imprisonment with an enhanced sentence of 33 months' imprisonment. He will now have more time to reflect on the deplorable nature of his transgressions and come to terms with reality.

[note: 1]Affidavit of Thong Sing Hock dated 29 July 2008 at para (B)4

[note: 2]Affidavit of Choo Si Sen dated 7 July 2008 at para 12

[note: 3]Affidavit of Choo Si Sen dated 7 July 2008 at para 5.4

[note: 4]Affidavit of Thong Sing Hock dated 29 July 2008 at para (C)8 and 10

[note: 5]Affidavit of Thong Sing Hock dated 29 July 2008 at para (C)8

[note: 6]Affidavit of Thong Sing Hock dated 29 July 2008 at para (C)11

[note: 7]Skeletal Arguments of Thong Sing Hock at para (C)(3) and Annex A

[note: 8]Skeletal Arguments of Thong Sing Hock at para (D)(1)

[note: 9]Skeletal Arguments of Thong Sing Hock at para (F)(1)

[note: 10]Affidavit of Wong Pong Yen dated 22 July 2008 at para 11

[note: 11]Affidavit of Wong Pong Yen dated 22 July 2008 at para 13

[note: 12]Affidavit of Wong Pong Yen dated 22 July 2008 at paras 8 and 10

[note: 13]Affidavit of Wong Pong Yen dated 22 July 2008 at para 11

[note: 14]Affidavit of Wong Pong Yen dated 22 July 2008 at para 12

[note: 15]Affidavit of Choo Si Sen dated 7 July 2008 at paras 5.3, 5.4

[note: 16]Affidavit of Thong Sing Hock dated 29 July 2008 at para (B)10.

[note: 17]Affidavit of Thong Sing Hock dated 29 July 2008 at para (C)8 (see also para (C)10)

[note: 18]Affidavit of Thong Sing Hock dated 29 July 2008 at para (B)4

[note: 19]See Skeletal Argument of Thong Sing Hock filed 12 June 2008 at para (A)

[note: 20]Skeletal Argument of Thong Sing Hock filed 12 June 2008 at para (F)(1)