Public Prosecutor v Goh Lee Yin and Another Appeal
[2007] SGHC 205

Case Number : MA 88/2007, 112/2005

Decision Date : 29 November 2007

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Lau Wing Yum and Shawn Ho (Attorney-General's Chambers) for the appellant in Magistrate's Appeal No 88 of 2007 and the respondent in Magistrate's Appeal No 112 of 2005; Spencer Gwee (Spencer Gwee & Co) for the respondent in Magistrate's Appeal No 88 of 2007 and the appellant in Magistrate's Appeal No 112 of 2005

Parties : Public Prosecutor — Goh Lee Yin

Criminal Law – Offences – Property – Theft – Sentencing considerations applicable to kleptomaniacs

Criminal Procedure and Sentencing – Sentencing – Mentally disordered offenders – Sentencing considerations applicable to kleptomaniacs

29 November 2007 Judgment reserved.

V K Rajah JA

Introduction

1 Advances in medical science have made the validation and accurate diagnosis of more psychiatric disorders practicable and more reliable. This has brought into sharper focus, the extent, if at all, a psychiatric disorder can be relevant in sentencing an offender. In discharging their responsibilities, the courts have a vital social-control role to fulfil in superintending mentally-disordered persons after they are convicted. Such illnesses can be a mitigating consideration or point towards a future danger that may require more severe sentencing. This is the paradox of sentencing the mentally ill. The courts have often to juggle and assess contradictory sentencing objectives in order to protect society and rehabilitate the offender, if feasible.

2 There has of course been an understandable anxiety amongst the prosecuting authorities that potential offenders may unduly take refuge from their culpability under the guise of being afflicted by "pseudo" psychiatric disorders and thereby be absolved of substantial legal responsibility for the offences they commit. In addition, there is also an inarticulate concern that the courts may in the process of acknowledging the existence of an impulse disorder, veer towards sanctioning a "culture of victimhood" and thereby open up Pandora's Box. These worries are misplaced. The courts will painstakingly assess all such cases. On the one hand, the law will not condone any acts of pretence. On the other hand, the offence often assumes a wholly different dimension once it is acknowledged that the diagnosis is accurate and the offender is, in actuality, labouring under some serious psychiatric disorder during the commission of the offence. There are times when the offender though not legally insane may succumb to the urges, inherent in certain serious psychiatric (and biological) disorders, to commit an offence. Such an illness may so affect and alter the state of the mind that the consequences of an act fade into irrelevance in the offender's mind. Ought the law then to adopt a thoroughly uncompromising approach and invariably throw the book, so to speak, at such offenders notwithstanding their unfortunate circumstances? Is it not in the public interest for the offender to be

rehabilitated, whenever practicable, so that he or she can resume a normal life and contribute to society? These questions, in turn, usually resolve themselves into two sub-issues: First, what is the extent of legal responsibility for the transgression that such an offender had at the material time? Secondly, what is the appropriate punishment that will maintain a fair and principled equilibrium in each matter between the interests of the public and that of the offender?

3 The present appeals brings into sharp focus, the psychiatric ailment of kleptomania, which has been described as an impulse control disorder, characterised by a recurrent failure to control and resist impulses to steal objects, including objects not generally needed for personal use (see [61] below). In my view, there is a need for the courts to adopt a broadly consistent and coherent approach in dealing with offenders who suffer from kleptomania. In this judgment, I shall attempt to provide some general guidance outlining the sentencing considerations which should be taken into account in cases of this nature. However, before I deal with these principles in greater detail, it would be both appropriate and necessary to set out the facts of the present case at some length. For convenience, I now set out the schematic layout that I have adopted in this judgment:

The facts

Background

4 The respondent (in Magistrate's Appeal No 88 of 2007), Goh Lee Yin ("the respondent"), has been clinically diagnosed as suffering from kleptomania. In the present case, she pleaded guilty in the District Court to two charges of theft under s 380 of the Penal Code (Cap 224, 1985 Rev Ed) (*viz*, District Arrest Case No 52403 of 2006 and District Arrest Case No 52404 of 2006), and consented to two other charges, one for theft under s 380 of the Penal Code and one for fraudulent possession under s 35(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed), to be taken into consideration for the purposes of sentencing. I should mention that this latter charge for theft under s 380 of the Penal Code is a resurrected charge (she had originally been given a discharge not amounting to an acquittal in respect of this charge) for an offence the respondent had committed on 15 October 2005 while her probation report, prepared for her appeal to the High Court in relation to her first series of offences (see [8] below), was still being finalised. For completeness, the charges faced by the respondent in the present matter are as follows:

> DAC 52403/2003 (P1)
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> You
>
> GOH LEE YIN …
>
> are charged that you on the 20th day of November 2006, at or about 1:20 p.m., at 'LV Boutique', No 1 Beach Road, Raffles Hotel Shopping Arcade, Singapore, which is a place used for the custody of property, did commit theft of a 'LV Pleaty' Denim handbag valued at $1,960/-, in the possession of the Store Manager, Kenny Kuek, and you have thereby committed an offence punishable under Section 380 of the Penal Code, Chapter 224.
>
> DAC 52404/2003 (P2)
>
> You
>
> GOH LEE YIN …
>
> are charged that you on the 20th day of November 2006, at or about 1:08 p.m., at 'Coach Boutique', No 252 North Bridge Road, #01-34/35, Raffles City Shopping Centre, Singapore, which is a place used for the custody of property, did commit theft of a 'Gold twin Frame wristlet' clutch bag valued at $375/-, in the possession of the Store Manager, Cheang Ming Chee, and you have thereby committed an offence punishable under Section 380 of the Penal Code, Chapter 224.

5 Having considered all the circumstances carefully, the District Court imposed a total sentence

comprising one day's imprisonment and a fine of $8,000. The district judge's grounds of decision are reported at *PP v Goh Lee Yin* [2007] SGDC 133 ("*Goh Lee Yin No 2 DC*"). Dissatisfied with the District Court's decision, the Prosecution appealed. The Prosecution has also commenced breach proceedings in relation to the respondent's breach of her probation resulting from Magistrate's Appeal No 112 of 2005. I will deal with this after I have dealt with the substantive appeal under Magistrate's Appeal No 88 of 2007.

6 I first heard the parties on 24 July 2007. In the course of the hearing, I invited the parties to arrange for the psychiatric experts to testify. I felt that this would provide me with a more comprehensive appreciation of the nature of the psychiatric disorder afflicting the respondent. This in turn could assist me in my assessment of the appropriate sentence, after taking into account the relevant rehabilitative and deterrent sentencing considerations. I heard both psychiatric experts, Dr Stephen Phang ("Dr Phang") and Dr Tan Chue Tin ("Dr Tan"), on 18 October 2007.

7 It is pertinent to state, at this preliminary juncture, that a key plank of the Prosecution's appeal is based on the fact that the respondent had committed the present offences while still under probation for previous offences of theft in dwelling under s 380 of the Penal Code. By virtue of this fact, the Prosecution urged me to impose a sentence which would reflect the seriousness of flouting court orders with impunity and send out a general deterrent message in this regard. In order to better understand the factual matrix of the present case in its entirety, I shall first elaborate upon the circumstances in which the respondent was convicted of the first series of shoplifting offences that resulted in the probation order.

First series of offences of theft in a dwelling

Background facts

8 The facts which led to the respondent's first brush with the courts are as follows. On 16 May 2005 at or about 4.00pm, the respondent entered Cold Storage Supermarket located at Novena Square at Thomson Road. While there, she stole several shaver cartridges, a razor, shoe insoles, a skin file and dental floss and placed them into three empty Cold Storage plastic bags that she had taken. Subsequently, she proceeded to Tangs Departmental Store at Orchard Road and stole a body shaving kit. At or about 4.40pm that same day, the respondent proceeded to Metro Departmental Store at Paragon Shopping Centre, Orchard Road, where she stole four bottles of "Clarins" sun care lotion and placed them into the Cold Storage plastic bags that she was still carrying. She was detained while leaving the store via the exit on the third level and arrested by the police. The respondent was on bail when she committed the offences of 16 May 2005. She had been earlier apprehended for similar offences committed on 27 April 2005 and 12 May 2005. When she committed these offences, the respondent was 24 years old.

Proceedings in the District Court

9 Before the District Court, the respondent pleaded guilty to two counts of shoplifting under s 380 of the Penal Code based on her offences committed on 16 May 2005. Four other similar charges (for the offences committed on 27 April and 12 May 2005) were taken into consideration for the purposes of sentencing. The district judge's decision can be found at *PP v Goh Lee Yin* [2005] SGDC 179 ("*Goh Lee Yin No 1 DC*").

10 Details of the respondent's psychiatric disorder were revealed in the psychiatric reports tendered to the District Court. Similar versions of these reports were also tendered to the High Court in the subsequent appeal.

(1) Dr Goh's report

11 According to the report dated 30 May 2005 prepared by Dr Jerome Goh Hern Yee ("Dr Goh"), a Registrar at the Department of Forensic Psychiatry, Woodbridge Hospital and Institute of Mental Health, submitted by the Prosecution to the District Court in *Goh Lee Yin No 1 DC* ([9] *supra*), the respondent suffered from kleptomania, which he described as "an impulse control disorder". Dr Goh examined the respondent on four occasions during her remand on 19, 24, 26 and 30 May 2005 and also interviewed the respondent's mother on 24 May 2005.

12 Dr Goh stated that the respondent claimed that she had been consistently shoplifting since she was nine years' old. Despite the respondent's 15-year history of shoplifting, she was first arrested only in 2003 but was let off with a warning. In 2004, she shoplifted about once a week. In May 2004, she was arrested in the US for theft while visiting her former boyfriend who was then studying at a university there. Following her arrest in the US, the boyfriend insisted that she seek treatment. She began attending counselling sessions on her return to Singapore. Her third arrest for shoplifting was in early September 2004.

13 She first saw a psychiatrist, Dr Tan (who also testified in relation to the present appeal on 18 October 2007 – see [6] above), for help after her arrest in early September 2004. She was prescribed Prozac (fluoxetine) (30mg daily) and was reviewed on a monthly basis. The frequency of her shoplifting was drastically curtailed during the first three months of 2005. However, she then stopped taking her medication and failed to keep her appointments with Dr Tan. In the weeks before her arrest on 27 April 2005 (from late March to early April 2005), she stole as often as three to five times a week. Her arrest on 16 May 2005 occurred just before she was due to fly to the US on 18 May 2005 to attend her boyfriend's graduation ceremony.

14 During her interviews with Dr Goh, the respondent claimed that she felt compelled to "try to steal more and steal other things for the thrill". However, the respondent also made it clear to Dr Goh that she was well able to afford the items that she had shoplifted and did not have any actual need for them. She further clarified that her motivation to steal was "not the need, not the money, but to try and see what I could bring out of the store". The respondent also added that she would throw away the things that might draw the attention of her family, while the other items were simply stowed away, unused. Dr Goh described the respondent's kleptomaniac condition as follows:

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

Concluding his report, Dr Goh opined that though the respondent had kleptomania, she had responded favourably to treatment in the past. She required long-term psychiatric follow-up and treatment for her condition.

(2) Dr Tan's reports

15 Similarly, Dr Tan, who prepared two reports dated 16 May 2005 and 19 August 2005 for the District Court in *Goh Lee Yin No 1 DC* ([9] *supra*), stated that the respondent suffered from kleptomania. He described this as an impulse control disorder associated with the buildup of tension and anxiety or depression which leads to an uncontrollable pathological urge to steal. The shoplifting afforded immediate relief from the overwhelming, overpowering mental distress.

16 Also, since young, the respondent had poor self-esteem and experienced frequent loneliness, depressive spells and harboured transient suicidal thoughts. Dr Tan pointed out that medical research has amply demonstrated the significance of low self-esteem, depression and dissatisfaction with life in the progressive development of compulsive shoplifting. It was these factors that culminated in the respondent's feelings of anger, depression and anxiety. These feelings were temporarily relieved through shoplifting activity. Dr Tan further stated that this transient relief served as a powerful reinforcement for further compulsion to steal whenever the respondent sank into another bout of untreated and unrelieved depression.

17 In Dr Tan's opinion, the respondent's case was uncommon as she did not steal for gain or pleasure. Instead, she stole to relieve a severe and unbearable mental tension, which she was unable to control, despite her desire to resist. She knew it was irrational, illegal and irresponsible, but was powerless to resist the overpowering urge to steal. Dr Tan opined that the respondent had defaulted on follow-up treatment and medication from 18 January 2005 as she felt she was "better" and "able to control her impulses". She also felt inadequate and embarrassed to acknowledge that she needed psychiatric help and medication. As a result, the respondent suffered a relapse and committed six shoplifting offences between 27 April 2005 and 16 May 2005, *ie*, the first series of shoplifting offences.

18 Dr Tan nevertheless affirmed the respondent's awareness of, and willingness to adhere to, the course of treatment she needed, and indicated that the respondent had started taking Prozac daily again. Dr Tan emphasised that a custodial sentence would be unsuitable for the respondent as it would aggravate her condition, adversely affect the prognosis for her recovery, and generally undermine all that had been done to help her recover.

The decision of the District Court

19 After hearing both parties, the district judge in *Goh Lee Yin No 1 DC* ([9] *supra*) considered that the respondent had been aware of her kleptomaniac condition. There had been no significant improvement in the respondent's conduct despite the fact that she was well aware of her medical condition and implications of her conduct. Moreover, she had committed the offences six times on three different occasions. In the result, the district judge concluded that probation or a fine would not be appropriate in the circumstances of the case and imposed on the respondent, a custodial sentence of two and a half months for each of the two charges preferred against her, ordering the sentences to run concurrently.

The appeal against the District Court's sentence

20 The respondent appealed against the District Court's sentence in *Goh Lee Yin No 1 DC* ([9] *supra*). The appeal was heard in the High Court by Yong Pung How CJ, whose grounds of decisions are reported in *Goh Lee Yin v PP* [2006] 1 SLR 530 ("*Goh Lee Yin No 1 HC*").

21 When the appeal first came before Yong CJ on 4 October 2005, he observed that while the age of an offender was often indicative of the effectiveness of probation in bringing about rehabilitation, this did not lead to the inexorable conclusion that rehabilitation could never be the operative concern in the case of an offender above the age of 21 years. This is particularly so if the offender demonstrates an extremely strong propensity for reform and/or there were exceptional circumstances warranting the grant of probation. Further, Yong CJ was of the view that the rehabilitation of the offender could also take precedence when other sentencing considerations such as deterrence were rendered less relevant, as might be the case for an offender belabouring under a serious psychiatric condition or mental disorder at the time of the incident. In the result, Yong CJ found that the medical

evidence confirmed that the respondent's urge to steal was pathological and that she was unable to control that urge when overcome by bouts of anxiety and depression. The medical evidence further indicated that punishment by incarceration would not only be unhelpful but might in fact destroy the respondent. Accordingly, finding himself unable to dismiss the appeal without first considering if probation was suitable, Yong CJ called for a probation report for this very purpose: see, generally, *Goh Lee Yin No 1 HC* at [24]–[32].

22 Unfortunately, as I have briefly alluded to above (at [4]), at or around 5.00pm on 15 October 2005, when the probation report was still pending, the respondent was again arrested for theft of four pairs of earrings from the Isetan Departmental Store at Wisma Atria. This formed the subject of a charge to be taken into consideration for the purposes of sentencing before the District Court in the present case. Nonetheless, in a letter dated 2 November 2005 written by Dr Tan to Mrs Foo-Lim Jim Jim ("Mrs Foo-Lim"), a senior probation officer, Dr Tan stated that although the fresh offence committed on 15 October 2005 looked bad in itself, the respondent's recovery could not be expected to occur in a "straight line" manner. Indeed, Dr Tan wrote that if one considered the respondent's mental state in the past years, her condition since May 2005 (at that time) was already a vast improvement.

(1) The probation report

23 Yong CJ described the probation report prepared by Mrs Foo-Lim to be "detailed and comprehensive": see *Goh Lee Yin No 1 HC* ([20] *supra*) at [33]. As Yong CJ had, with respect, ably and concisely summarised the key contents of the probation report, I gratefully reproduce the relevant paragraphs from *Goh Lee Yin No 1 HC* in this judgment (*Goh Lee Yin No 1 HC* at [37]–[40]):

> 37 Mrs Foo-Lim stated that [respondent] was also aware of the need to take her medication daily. However, she would still occasionally forget to take her medication at home, and would then take her medication at Dr Tan's clinic. She would feel the "urges" even while on medication, although she was better able to fight them with the strategies she had been taught. She admitted to having stolen while on medication between June 2005 and October 2005, when she took newspapers from a 7-Eleven store while on her way to Dr Tan's clinic. She claimed, however, that she had forgotten to take her medication on 15 October 2005 when she was arrested for stealing four pairs of earrings from the Isetan Departmental Store at Wisma Atria.
>
> 38 The probation report confirmed Dr Goh and Dr Tan's assessment that the [respondent] required long-term treatment and medication to address her offending behaviour. She had resumed taking Prozac daily, and had also been prescribed Lexotan (bromazepam) to counter the state of "anxiety" induced by the use of Prozac. The medication alleviated the [respondent's] tension and enabled her to resist her "urges" to a certain extent. However, medication alone was insufficient to curb her impulse to steal when the "urges" were great, as evinced by the one occasion when the [respondent] had stolen newspapers from 7-Eleven store despite being on medication. The [respondent's] risk of re-offending was high. Her initial struggle to accept her condition, take her medication regularly and resist the temptation to steal contributed to the commission of the recent offence of 15 October 2005.
>
> 39 However, Mrs Foo-Lim considered the support the [respondent] received from those around her and her own resolve now to deal with her condition to be strong positive factors. Her family and her boyfriend's parents were close to and concerned about her. The [respondent's] latest arrest on 15 October 2005 finally made her family realise the seriousness of her condition and the extent of support she needed to overcome the challenge she faced.

> 40 Her family members met with her boyfriend's parents, who also expressed their willingness to help. Her family, aunt and uncle and her boyfriend's parents all pledged to play an active role in her rehabilitation, and mobilised their resources to ensure that the [respondent] remained closely supervised at all times, including during her trips to shops or stores. A 24-hour supervision plan … was instituted to chaperone the [respondent] while she recovers from her condition and has been operative since 24 October 2005. The [respondent's] sister expressed her willingness to be the main co-ordinator of all the supervision arrangements, and was willing to execute a bond if required by the court under s 10(1) of the [Probation of Offenders Act (Cap 252, 1985 Rev Ed)].

24 As such, having considered all the relevant factors, Mrs Foo-Lim recommended that the respondent be placed on a 24-month probation with appropriate conditions attached.

(2) The High Court's decision

25 In assessing the appropriateness of probation for the respondent in *Goh Lee Yin No 1 HC* ([20] *supra*), Yong CJ carefully considered the entirety of circumstances. He was ultimately impressed by the commitment and resolve of the respondent's family and caregivers to look after the respondent and ensure her adherence to the supervision plan. It was by virtue of the exceptional support and commitment on the part of the respondent's family and caregivers to secure her recovery and rehabilitation that the essential conditions for the viability of her probation could be fulfilled. Furthermore, Yong CJ noted that the respondent had also displayed tangible progress in her rehabilitation, and that as long as the respondent remained faithful in taking her daily dose of medication, her prognosis for complete recovery was positive.

26 In the end, Yong CJ recognised that incarceration was not an appropriate solution to the respondent's problem. In his view, it would not serve to deter the respondent, whose offences were a manifestation of her mental affliction. On the other hand, it would instead exacerbate her condition and destroy the very last hopes for her recovery. In allowing the appeal and placing the respondent on a 24-month probation, Yong CJ warned the respondent in no uncertain terms of the imperative on her part to assiduously avoid re-offending again, failing which the courts would have little alternative but to visit upon her a period of incarceration (*Goh Lee Yin No 1 HC* ([20] *supra*, at [57])):

> … I impressed upon [the respondent] the need to adhere assiduously to the supervision plan and to take her medication daily. The consequences of default were assuredly grave. Any breach of her probation order or commission of a subsequent offence would, under s 5(4) of the [Probation of Offenders Act (Cap 252, 1985 Rev Ed)], render her liable to be sentenced for her original offences. *Given those circumstances, the court will be left with little alternative but to abrogate the [respondent's] freedom of movement altogether by incarceration for as long as is required for the protection of both the public and the [respondent]*. [emphasis added]

27 Yong CJ also took the opportunity to lament that the courts were ill-equipped to deal with mentally afflicted offenders such as the respondent. Referring specifically to the case before him, Yong CJ observed that the court was unfortunately saddled with having to choose between imprisonment and probation, neither of which represented a truly satisfactory or appropriate solution. *Yong CJ further opined that if the courts were to properly adjudicate on cases where the offender suffered from some medical condition, the courts must be vested with the requisite sentencing discretion. Alternatively, Yong CJ stated that it was to be greatly preferred if the Attorney-General's Chambers would, after proper verification, refer mentally ill or otherwise deficient offenders to the appropriate Ministry or government agency where such cases may be more fittingly administered*. I cannot agree more with Yong CJ's penetrating and astute observations.

The offences of theft in dwelling in the present case

28 Unfortunately, and in my view, somewhat regrettably, the respondent committed another spate of shoplifting offences which have resulted in the present proceedings. My feelings of regret are not solely and exclusively directed at the respondent. Indeed, I should at this stage record my disappointment that the Prosecution has decided not to heed Yong CJ's recommendation that, in shoplifting cases such as the present, which decidedly involve "mentally ill or otherwise deficient offenders" (see [27] above), the more appropriate course of action should be to refer the offender in question to a more suitable forum for the matter to be more fittingly dealt with. I shall have more to say on this later; for now, I first turn to the salient facts of the offences in the present case.

Background facts

29 The respondent admitted without qualification to the Statement of Facts adduced in support of the charges preferred against her in the present case. According to the Statement of Facts, investigations revealed that on 20 November 2006 at about 1.20pm, Chia Kheng Guay ("Chia"), a sales assistant at the Louis Vuitton boutique at Raffles Hotel Shopping Arcade ("the LV store"), was stationed at the LV store when she saw the respondent walk into the store. The respondent started browsing through some of the bags on display. Chia spotted the respondent holding onto a bag belonging to the LV store for quite some time. As she felt that the respondent was behaving suspiciously, Chia continued keeping an eye on the accused.

30 A short time later, Chia noticed the respondent leaving the LV store abruptly. Chia immediately went to check the display panel and saw that the bag which the respondent had been examining was missing. Chia then walked out of the LV store and managed to apprehend the respondent. The respondent promptly handed over the bag to Chia, who, upon examining the bag, discovered that the security sensor which had been attached to the bag was missing. She subsequently found the sensor lodged between some other bags in the LV store. Chia reported the incident to the store manager, who then called the police. The bag was verified to be a "PLEATY" Denim bag valued at $1,960 belonging to the LV store. These facts formed the basis for the charge in District Arrest Case No 52403 of 2006 (see [4] above).

31 Upon arrest, the respondent was found in possession of the following items (which were seized as case exhibits), with their price tags still on:

(a) one "Gold twin frame wristlet" clutch bag, valued at $375;

(b) one "Warehouse" black blouse, valued at $143;

(c) one "Warehouse" bronze handbag, valued at $39; and

(d) one "Accessorize" black handbag, valued at $55.90.

32 Further investigations revealed that on 20 November 2006, at about 3.00pm, Foo Seck Jen ("Foo"), a retail associate for "Coach" store located at Raffles City Shopping Centre ("the Coach store"), was stationed at the Coach store when he discovered that a gold, twin-frame-wristlet clutch bag was missing from the display set. After clarifying with the other staff that no one had sold it, Foo informed his manager, one Cheang Ming Chee ("Cheang"), who then proceeded to view the CCTV recording of the Coach store to ascertain who had taken the bag. The CCTV recording revealed that, at about 1.00pm on the same day, the respondent had taken an item from the display set. Foo proceeded to lodge a police report. The gold, twin-frame-wristlet clutch bag found in the

respondent's possession was later verified by Cheang as belonging to the store. These facts formed the basis for the charge in District Arrest Case No 52404 of 2006 (see [4] above).

Proceedings in the District Court

33 The district judge called for a further progress report from Mrs Foo-Lim, the probation officer supervising the respondent. Along with this progress report, the district judge also had access to two psychiatric reports from Dr Phang and Dr Tan, as well as a psychological progress report from the Psychological Services Unit, to which the respondent had been referred to for therapy since 22 November 2005. These documents provide important background information about the respondent before and after the commission of the offences for which she was convicted of in the present case. It would therefore be useful, in my view, to examine these documents in some detail.

(1) Psychological progress report

34 The psychological progress report dated 19 March 2007 was prepared by Mr Lim Han Siang and Ms Jennifer Teoh Boon Pei. The report stated that while the respondent's progress in the therapy sessions had been slow during the initial stages of treatment, her therapeutic progress improved after a victim impact cum family conference was called for on 2 June 2006. It was apparent during the earlier sessions of treatment that the respondent, who viewed her offences as being trivial, appeared to have significant difficulty in appreciating the seriousness of her theft offences and the impact of her offending behaviour on both primary and secondary victims (*ie*, her relatives and friends). The report noted that the respondent benefited from the family conference as she demonstrated some awareness of the impact of her theft on her victims, including her mother and sister.

35 The report also provided some additional factual information pertaining to the respondent's commission of the second series of shoplifting offences. The respondent had been employed at Mount Elizabeth Hospital as a conference coordinator since May 2006. On 16 November 2006, the respondent was told by her probation officer that her employer would terminate her service. The following day (*ie*, 17 November 2006), the respondent was indeed asked by her employer to leave. The abrupt termination came as a shock to the respondent. Furthermore, the respondent was also upset by Dr Tan's comments that he was disappointed with her for not doing a good job at work.

36 On 20 November 2006, which was the day the respondent committed the offences in the present case, the respondent was asked to tutor children as part of her community service order. While at the agency, the respondent admitted to having thoughts of stealing as she was feeling distressed about her work situation. The respondent lied to her agency supervisor that she was meeting her boyfriend for lunch. The respondent reported that, during the lunch hour, she proceeded to Raffles City alone and then thought of stealing again. It was then the respondent committed the offences concerned in the present case.

37 The report stated that it appeared that the respondent had committed the offences because of her anxiety and stress over the loss of employment. Feeling depressed, she had reverted to stealing to make herself feel better as this was her method of coping in the past. It was further mentioned that the respondent appeared remorseful about her most recent offences and she expressed her disappointment in letting down the people who had been supportive of her rehabilitation.

38 Overall, the report described the respondent's therapeutic progress as being satisfactory until her second series of offences. However, the report stated that the respondent's second series of offences indicated that the respondent had yet to fully internalise the knowledge she had acquired from the treatment programme. In particular, the report noted that the prevailing treatment issues for

the respondent were her strained relationship with her mother and her inability to utilise risk management strategies in times of acute stress. Concluding, the report assessed the respondent's current risk of re-offending to be "moderate to moderately high", after considering her "past chronic history of pilfering behaviour, her psychiatric condition and failure in treatment". It was recommended that the respondent would need long-term treatment for her theft behaviour.

(2) Dr Phang's report

39 Dr Phang examined the respondent once on 18 January 2007, principally for the purpose of a forensic psychiatric evaluation in respect of her second series of offences of theft in dwelling. The particular session had commenced with the respondent explaining that she had obtained the appointment at the recommendation of Dr Tan, who, as already mentioned, remained her principal consultant psychiatrist. Dr Phang thus conducted a forensic assessment on the understanding that Dr Tan would continue the respondent's psychiatric treatment in the longer term.

40 During the session with Dr Phang, the respondent explained that she had been feeling rather distressed at the time of her second series of offences, citing her dissatisfaction with what she perceived as "unfair treatment" at her previous place of employment. She claimed that her former employer had not fairly remunerated her for overtime work. She also expressed difficulties in completing her 240 hours of mandatory community service, which was an integral part of her probation in respect of the first series of shoplifting offences in 2005. The respondent further stated that she experienced an urge to take things on 20 November 2006, even though she was aware of her wrongful conduct. The respondent said that she felt relieved after taking the items concerned, and reiterated that she did not in fact need or want the items.

41 In his report dated 22 February 2007, Dr Phang opined and reconfirmed the opinion of other psychiatrists (*ie*, Dr Goh and Dr Tan) that the respondent did indeed suffer from kleptomania. Dr Phang stated that it was of "immense significance" that the respondent described walking out of the relevant shops with the objects in hand, making no apparent attempt to conceal her ill-gotten gains. She also could not recollect the sequence with which she visited the shops concerned. This was, according to Dr Phang, reflective of the respondent's manifestly disturbed state of mind at and around the material times of the offences.

42 Dr Phang further noted that the respondent had "achieved significant progress and improvement in the past year with respect to her disorder". He stressed that the process of recovery from any serious mental disorder does not, as a rule, follow a smooth, positive trajectory. In closing, Dr Phang expressed the "unflinching conclusion" that the respondent will, given the fullness of time, achieve satisfactory recovery from her psychiatric disorder, provided that she remains compliant to all the treatment modalities prescribed by her treating psychiatrist.

43 In a further letter dated 3 April 2007 to Mrs Foo-Lim, Dr Phang reiterated that the respondent's recent second series of offences, while regrettable, did not diminish the possibility of recovery, given the fullness of time and in the context of robust psychiatric treatment. However, Dr Phang opined that it was not inconceivable that treatment programmes for individuals suffering from kleptomania were unlikely to meet with success if implemented in a closed, and presumably restrictive, environment.

(3) Dr Tan's report

44 Dr Tan's report dated 26 December 2006 emphasised that it was notable that from 15 October 2005 to 20 November 2006, the respondent had been free of her kleptomaniac impulses for the whole

year. Additionally, it was pointed out that she had also during this period: (a) performed community service, (b) taken her medication daily, (c) attended psychiatric and psychological sessions regularly, and (d) generally complied with the treatment plans instituted for her. Dr Tan opined that, considering the fact the respondent had shoplifted on four occasions in 2005, a kleptomania-free period of one year was, in medical terms, a significant improvement.

45 Dr Tan also noted that the respondent had worked as a temporary clerical assistant in his clinic from October 2005 to May 2006 and thereafter at Mount Elizabeth Hospital as a conference coordinator. Dr Tan stated that it was crucial to note that in both jobs, the respondent had not stolen anything despite being allowed to handle cash and valuable items.

46 Concluding, Dr Tan emphasised that, in medical terms, despite the second series of offences on 20 November 2006, the respondent had made significant progress given the fact that she had not shoplifted for the one year prior to 20 November 2006. The respondent herself felt that she had changed and had much more self-confidence and self-esteem during the period she was working. Dr Tan wrote that the respondent was still strongly motivated to fight her illness and that in kleptomania, *recovery does not follow a straight line and that it almost always described an upward but jagged trajectory*. In the end, Dr Tan opined that the fact that the respondent had stolen again should not be considered in isolation but rather be evaluated against the previous frequency of offences and the quality of life she had achieved in the year before her second series of offences.

47 In a second letter dated 8 April 2007, Dr Tan expressed the view that his treatment plan for the respondent could not be implemented in a prison environment. In particular, it would be difficult for the respondent's family members and close friends to render any help to her. This would impede her ability to go on supervised shopping trips as part of the risk management and rehabilitative process. She would also be prevented from working at home and living in a natural habitat with the people she loves and who love her in turn. Finally, the respondent's mental and emotional stability was crucial to any treatment plan being effective and a prison environment would not be suitable in carrying out the recovery programs devised for the respondent.

(4) The progress report

48 After considering the opinions of the psychologists and psychiatrists mentioned above, Mrs Foo-Lim's progress report expressed the view that the respondent's new offences reflected her questionable commitment to the rehabilitation programme drawn up for her. While she had superficially learned about the offence triggers and developed management strategies, she did not see the need to put them into action when they were most needed. Mrs Foo-Lim regarded as most galling the circumstance prior to the thefts. The respondent knew she was at high risk of re-offending but, instead of minimising the risks, she aggravated it. It was highlighted that the respondent lied at the agency where she was doing her community service about a non-existent appointment and travelled to subject herself to temptation. In Mrs Foo-Lim's view, not only did the respondent betray the trust of the care-givers, she had failed to recognise her vulnerability and instead willingly succumbed to temptation.

49 In the event, Mrs Foo-Lim opined that, while probation had benefited the respondent, it was inadequate to address her needs. Mrs Foo-Lim stated that the respondent needed a close and structured environment that would positively impact her, along with the requisite psychiatric and psychological intervention. Only then, in Mrs Foo-Lim's view, would the respondent truly embrace the fact that there were no short cuts to dealing with her medical disorder.

The decision of the District Court

50 After taking into account all the factors as well as the reports he received in the present case, the district judge held that despite all the intervention, the respondent had not fully appreciated the consequences of re-offending. In his view, the second series of offences were committed because she had been devastated after she had been criticised over her work performance. This reinforced his concern that she has not adequately realised the serious consequences of committing such offences. Finally, the district judge noted that the respondent's conduct was all the more aggravating in the light of her disregard of the clear warning by Yong CJ before he placed her on probation (see [23] above): see *Goh Lee Yin No 2 DC* ([5] *supra*, at [11]).

51 Ultimately, the district judge concluded (*Goh Lee Yin No 2 DC* ([5] *supra*, at [13])):

> The [respondent] cannot be allowed to continue committing shoplifting offences with impunity for an indefinite period of time until she recovers fully from her ailment. I agree with the submission by the learned DPP that at some point in time, the goal of rehabilitation must give way to the goal of public protection, and that the court should now (after having already given the [respondent] a chance at rehabilitation) "*safeguard the interests of the law-abiding general public*" by sentencing her for the offences committed. [emphasis in original]

Accordingly, after emphasising the need for the respondent to appreciate and acknowledge that she had breached the limits of rehabilitation efforts that were aimed at enabling her to seek treatment and stay out of prison, the district judge stated that the purpose of his sentence was to reflect an element of individual deterrence, to instil in her the clear message that she will increasingly face far more serious consequences for a re-offence. In the result, the district judge imposed, with respect to District Arrest Case No 52403 of 2006, one day's imprisonment and a fine of $5,000; and with respect to District Arrest Case No 52404 of 2006, one day's imprisonment and a fine of $3,000, with both sentences to run concurrently.

The appeal

The parties' submissions

The Prosecution's submissions

52 The Prosecution's appeal before me against the District Court's sentence in *Goh Lee Yin No 2 DC* ([5] *supra*, at [2]) in Magistrate's Appeal No 88 of 2007 is based on several grounds. It has been submitted that the sentence pronounced by the district judge is manifestly inadequate for the following reasons:

(a) The district judge failed to place the appropriate weight on the fact that when the respondent was committing the second series of offences; she was unremorseful and breached a previous probation order for offences of a similar nature by re-offending.

(b) The district judge failed to place the appropriate weight on Yong CJ's warning in *Goh Lee Yin No 1 HC* ([20] *supra*) that the consequences for breach of the probation order are "incarceration for as long as is required for the protection of both the public and the [respondent]".

(c) The district judge failed to place the appropriate weight on the facts leading up to the offences as stated in the progress report.

(d) The district judge failed to place the appropriate weight on the fact that the respondent's

theft of branded handbags that cost a total of $2,335 demonstrated a selectively-exercised kleptomania.

(e) The district judge erred in placing undue weight to *Chuah Gin Syn v PP* [2003] 2 SLR 179 and *Chinta Murali Krishna v PP* (Magistrate's Appeal No 289 of 2002), both of which could be distinguished from the facts of the present case.

(f) The district judge erred in finding on the facts of the case that a sentence of one day's imprisonment and a fine of $8,000 would adequately protect the law-abiding members of the public and would serve the interest of justice as a sufficiently deterrent sentence.

53 In essence, the Prosecution submitted that a sentence of one day's imprisonment was manifestly inadequate, especially given the fact that the necessary protection for the public as a paramount consideration would be seriously compromised. It was argued that increasing the sentence would give full effect to Yong CJ's warning in *Goh Lee Yin No 1 HC* ([20] *supra*) to the respondent (see [26] above). On principle, it was submitted that imposing a heavier sentence would be entirely justified in view of the respondent "blatantly breaching her probation order by re-offending, and considering the facts leading up to her offences", which included her lying about a non-existent appointment and aggravating the high risks of offending. In the premises, it was urged upon me to allow the Prosecution's appeal and enhance the sentence of imprisonment, impose a term of imprisonment for the breach action, and to order at least two imprisonment terms to run consecutively.

The respondent's submissions

54 Counsel for the respondent, Mr Spencer Gwee ("Mr Gwee"), first submitted that the Prosecution has resurrected the old charge under s 380 of the Penal Code and given no quarter to her on every occasion. He further alleged that the Prosecution has adopted the "settled policy" that the respondent should be imprisoned. Indeed, Mr Gwee argued that while the Prosecution was willing to concede that the respondent needed treatment, it has "unjustifiably" insisted that it must be within prison walls to "satisfy their clarion call … that she should be incarcerated". This was, according to counsel, notwithstanding the views of Dr Phang and Dr Tan, who were of the "unshakable opinion" that a custodial sentence would worsen her condition and put paid to all the past efforts for her eventual recovery. It was urged upon me that a sentence of imprisonment would result in an environment which would be "catastrophically" unsuitable for the respondent's treatment and rehabilitation.

The psychiatric experts' evidence

55 Notwithstanding both parties' robust submissions, I find it more useful in a case such as this to attach similar, if not greater, importance to the psychiatric experts' evidence. Indeed, another reason why I regard the present case as one which should never have reached the court system is the nature and thrust of arguments which the adversarial system generates. Such arguments, couched in colourful language to advance completely contrasting interests, while appropriate in most cases, are manifestly ill-suited to address the true concerns in a case such as the present one. Opposing parties adopt slogans and viewpoints which, like medieval-battle colours, serve opposite sides of the divide without pinpointing the exact problems and ascertaining the objective and unbiased-medical evidence which should form the focus of the court's attention. Heat is often generated through such a process without any accompanying illumination. For example, Mr Gwee's suggestion that the Prosecution were out to get his client is misconceived. Similarly, Mr Lau's submission, made on behalf of the Prosecution, that the respondent is a threat to the retail industry is remarkable.

56 As I have mentioned, I had the benefit of hearing the expert evidence of both Dr Phang and Dr Tan in court on 18 October 2007. I will refer to their evidence later in this judgment at the relevant points. For now, I must once again express my gratitude to Dr Phang and Dr Tan, who provided me with persuasive medical evidence.

The issues

57 To my mind, the overarching question of how the courts should deal with offenders labouring from the psychiatric disorder of kleptomania lends itself to several other sub-issues. For clarity, I shall deal with this question in the following manner. In my view, there is first a need to understand the general principles of sentencing, before turning to the specific sentencing considerations in the present case, involving, as it were, an adult offender with a psychiatric disorder, which appears to be the cognitive cause of her offending conduct. It follows naturally from this that there is an acute necessity to understand the nature of kleptomania, including its incidence and treatment options. Only with such information can the courts give contextual meaning to the often cited labels of, for example, rehabilitation, deterrence and incapacitation and apply them to the specific facts of each case. With this broad outline of the issues in mind, I turn first to the general principles of sentencing.

Principles applicable in determining appropriate sentence in this case

General principles of sentencing

58 In determining any sentence, a good starting point is the four classical principles of sentencing stated by Lawton LJ in *Regina v James Henry Sargeant* (1974) 60 Cr App R 74 ("*Sargeant*"). Lawton LJ in *Sargeant* stated at 77:

> What ought the proper penalty to be? … [The] classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

59 This general proposition has been cited on innumerable occasions by the courts as a valuable guide in the sentencing process: see, for example, *PP v Law Aik Meng* [2007] 2 SLR 814 ("*Law Aik Meng*") at [17]. In deciding which of the four principles are most appropriate, it is axiomatic that the principles that are most relevant and have the greatest importance in a case would substantially impact the type and extent of sentence imposed: see *PP v Tan Fook Sum* [1999] 2 SLR 523 ("*Tan Fook Sum*") at [15]. In every case, the sentencing court strives to achieve a proper balance of these four principles or "pillars of sentencing": see *Chua Tiong Tiong v PP* [2001] 3 SLR 425. The sentence imposed on the offender not only serves to punish him, it also seeks to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend again.

60 In a case such as this, where the respondent is an adult offender whose offences have been committed while suffering from a psychiatric disorder, *viz*, kleptomania, which seems to prompt the offence, the principles of rehabilitation and deterrence must form the prime focus of my attention. I shall also state my views on the relevance of incapacitation and why the nature of the offences committed by kleptomaniacs renders this particular consideration relatively unimportant. However, in order to give the proper meaning to these labels, it is first pertinent to examine the nature of kleptomania.

The psychiatric disorder of kleptomania

The nature of kleptomania

61 Kleptomania (Greek: κλἐρτειν, kleptein, "to steal", μανία, "mania") is an impulse control disorder characterised by the inability to resist impulses to steal objects that are not generally acquired for personal use or monetary gain. The individual concerned describes a compulsive urge to steal. The behaviour is classically accompanied by an increasing sense of tension before, and a palpable sense of relief immediately after and during the act.

62 According to Dr Phang, the literature, other than *International Classification of Diseases*, 10th Rev (ICD-10, 1992), does not generally explicitly differentiate between compulsive stealing associated with, or symptomatic of other psychiatric disorders (in which case treatment of the underlying disorder would be expected to ameliorate the kleptomaniac symptoms), and "pure" kleptomania (which is also frequently eventually complicated by the onset of secondary depression). Anecdotal clinical experience suggests, however, that the disorder is exceedingly rare, and calls for a diagnosis of exclusion. The commonest psychiatric disorder in the mentally disordered shoplifter, incidentally, is affective disorder, commonly known as depression.

63 The *International Classification of Diseases* states that the disorder should be distinguished from the following cases:

(a) recurrent shoplifting without a manifest psychiatric disorder, when the acts are carefully planned, and there is an obvious motive of personal gain;

(b) organic mental disorder, when there is recurrent failure to pay for goods as a consequence of poor memory and other kinds of intellectual deterioration; and

(c) depressive disorder with stealing.

Similarly, the *Shorter Oxford Textbook of Psychiatry* (Oxford University Press, 4th Ed, 2001) is also explicit in stating the exclusion criteria for making the diagnosis of kleptomania:

> The diagnosis is not made when there is an associated antisocial personality disorder, a manic episode, or (among children or adolescents) a conduct disorder, nor when stealing results from sexual fetishism.

64 As to the peculiar features of kleptomania, the essential diagnostic criterion is the recurrent failure to resist the impulse to steal items that are not needed for personal use or that have little personal value. The individual concerned may experience a rising sense of tension before the theft, and then experience gratification and/or anxiety reduction afterwards. Typically, the objects stolen usually have little value, and the person sometimes offers to pay for them, or may give them away, or sometimes hoards them. What is especially cogent in this respect is perhaps the absurdity of the act – what is stolen is not generally needed. For example, Dr Phang testified in court that he had experience dealing with kleptomaniacs who stole such items as eggs or even soap and tissue rations while in prison.

65 Further, whereas the thefts of most shoplifters have personal gain as the typical motivation for the act, the acts of thefts of kleptomaniacs do not. In this regard, the "gain" there is the relief obtained from the sense of the unbearable anxiety and tension prior to each episode of theft. Goods are not generally stolen for their material value, although Dr Phang took pains to point out that valuable objects may also on occasion be stolen by genuine kleptomaniacs. This would, however, be the exception rather than the norm. In court, Dr Phang stated that this would happen if the

kleptomaniac concerned felt his or her irresistible urges when in the vicinity of a valuable item – the urge to steal would then be relieved by the taking of such objects, and the taking is not motivated by the material cost of the object taken.

66 Finally, kleptomania is now thought to have a biological basis, a deduction supported by the efficacy of treatment with long term medication. Elaborating in court, Dr Phang said that kleptomania is thought to be associated with the deficiency of some neurological function of the brain. It is more prevalent among women. The behaviour may be sporadic with long intervals of remission, or may persist for years despite repeated prosecutions. In short, it is an enigmatic condition, the diagnosis of which must necessarily be made after the exclusion of all other causes of the repeated thefts.

The incidence of kleptomania

67 According to a report submitted by Dr Phang, at the request of the Prosecution on 26 July 2007, following the first hearing before me on 24 July 2007, he was unable to confirm with exactitude the prevalence or general incidence of kleptomania in Singapore. However, he testified that the number in Singapore was probably 1% of all apprehended shoplifters, and in any event, the number was in all likelihood "minuscule". Internationally, Dr Phang noted that the rate of this disorder varied considerably, depending upon the source of the data. Figures varying between a wide range of 0.6% (6 per 1,000 persons) to 4% have been quoted in the medical literature. It was also pointed out by Dr Phang that the authoritative forensic psychiatric textbook, Gunn and Taylor (Ed), *Forensic Psychiatry*, (1993) ("*Forensic Psychiatry*") describes the prevalence of the disorder in the following terms: "It is not known what proportion of all arrested shoplifters will fulfil the criteria of the condition, but probably fewer than 5% do so". An obvious caveat to the above figures is the fact that most cases of kleptomania are identified through court-ordered evaluations of apprehended shoplifters and the rate of the disorder in the *general population* is therefore not known.

68 Dr Tan's report dated 12 September 2007 reflected similar conclusions as Dr Phang's report. Dr Tan opined that there is no study done locally to ascertain the prevalence or incidence of kleptomania. He likewise cited *Forensic Psychiatry* for the 5% incidence rate among arrested shoplifters and considered that this was consistent with the very few numbers he has seen in his 30 years of practice and the accumulative experience of his psychiatric colleagues in Singapore, both in the private as well as the public sector.

The treatment of kleptomania

69 Dr Tan in his report dated 12 September 2007 stated that as kleptomania is compulsive and very rare, treatment intervention is difficult to evaluate. However, in Dr Tan's opinion, it is possible to achieve successful treatment of about two to three patients out of about seven to eight cases. In the main, a holistic, multi-pronged approach using as many treatment modalities as possible is currently the best approach for intervention.

70 Such treatment modalities include:

(a) regular psychotherapy;

(b) behavioural therapy;

(c) medication where appropriate;

(d) moral and emotional support by the individual's relatives and friends;

(e) home stay where the individual can have the support and help of family members, and the flexibility of going to shopping centres (accompanied by others) for systematic exposure; and

(f) home-based work, especially tuition and contract jobs which can be done *via* computer or telephone.

71 Dr Tan reiterated his earlier views that a prison environment, apart from being custodial and restrictive, does not permit any of the kleptomaniac's family members or friends to render help or emotional support to the individual concerned. It is also does not permit the kleptomaniac to do regular home-based jobs or be exposed to shopping centres systematically. Dr Tan emphasised that the respondent has made significant progress in the past year and has not stolen during this period. The respondent has also demonstrated increased self-confidence and self-esteem and Dr Tan stated that the mere imposition of imprisonment would probably destroy the respondent's newly found self-esteem and derail the treatment plan for her. In the main, Dr Tan highlighted that the respondent's road to recovery must necessarily be recognised as being lengthy and one must not ignore the fact that the respondent is very susceptible to irrational human emotions, which may at times trigger her kleptomaniac tendencies. What is more important is for the respondent to stick to her long-term treatment plan, with the well-founded belief that she will eventually overcome her disability.

72 Dr Phang, on the other hand, expressed his opinion that short-term incarceration would not necessarily make the treatment of the respondent impossible. It all depends on the length of the "short-term" period of incarceration. However, he acknowledged that non-medical treatment modalities such as psychological and social therapy could be difficult to administer in a closed environment such as a prison.

The respondent's diagnosis of kleptomania

73 The respondent has of course been previously diagnosed by both Dr Goh and Dr Tan as suffering from kleptomania. However, as the Prosecution pointed out, the respondent had in her second series of offences stolen branded handbags that cost a total of $2,335, which in turn "demonstrated a selectively exercised kleptomania". While this submission was not made with any solid scientific backing, a cursory reading of the diagnostic criteria provided by Dr Phang, without any medical background, does lend itself to some concern that the respondent's second series of offences appear to fall outside of the said criteria. In particular, the objects stolen could not be described as being trivial in terms of their monetary value.

74 Indeed, Dr Phang stated in court that his diagnosis of the respondent as a kleptomaniac was arrived, at not without difficulty, but his ultimate conclusion that she was indeed suffering from the disorder was based on both authoritative and official diagnostic criteria. In his view, the respondent was the hardest of his existing patients to diagnose, principally because the respondent had in the second series of offences stolen objects which could not necessarily be described as being lacking in monetary value. This can in turn be contrasted with previous instances of kleptomania which Dr Phang had diagnosed, all of which involved individuals who fulfilled this criterion "robustly": see also [65] above. In the end, Dr Phang concluded that because the respondent fulfilled all the other major criteria, he gave her the benefit of the doubt and diagnosed her as suffering from kleptomania, although he did state in court that the respondent may not be wholly described as a "pure" kleptomaniac.

75 Notwithstanding this, however, the fact remains that the respondent has been rigorously diagnosed as suffering from kleptomania by not one, but three, psychiatrists, two of whom are in the public sector.

The need for deterrence and rehabilitation in cases involving kleptomaniacs

76 As I have mentioned above (at [60]), the twin sentencing considerations which must surely form the focus in the present case are deterrence and rehabilitation. The key concern is to seek the right balance between these two considerations and ascertain the most appropriate sentence in the present case.

Deterrence

77 I first turn to deterrence. My views on the application of deterrence as a sentencing principle have been extensively stated in *Tan Kay Beng v PP* [2006] 4 SLR 10 at [29]–[34] and, more recently, in *PP v Law Aik Meng* [2007] 2 SLR 814 ("*Law Aik Meng*") at [18]–[27]. It thus suffices for me to note generally that there are two aspects to deterrence: specific deterrence which is deterrence of the offender and general deterrence which is deterrence of like-minded offenders.

(1) Specific deterrence

78 Specific deterrence aims to discourage crime by punishing offenders for their transgressions and thereby convincing them that crime does not pay. In line with this broad proposition, I stated the following principles in relation to specific deterrence in *Law Aik Meng* at [21]–[22]):

> 21 Specific deterrence operates through the discouraging effects felt when an offender experiences and endures the punishment of a particular offence. Drawing from the maxim "once bitten twice shy", it seeks to instil in a particular offender the fear of re-offending through the potential threat of re-experiencing the same sanction previously imposed.
>
> 22 Specific deterrence is usually appropriate in instances where the crime is premeditated: *Tan Fook Sum* at 533, [18]. This is because deterrence probably works best where there is a *conscious* choice to commit crimes. Nigel Walker and Nicola Padfield in *Sentencing: Theory, Law and Practice* (Butterworths, 2nd Ed, 1996) ("Padfield & Walker, 1996") at p 99 explain the theory of "undeterribility". Pathologically weak self-control, addictions, mental illnesses and compulsions are some of the elements that, if possessed by an offender, may constitute "undeterribility", thus rendering deterrence futile. Such elements seem to involve some form of impulse or inability to make proper choices on the part of the offender, which, by definition, runs counter to the concept of premeditation. It should be pointed out here that this reasoning applies with equal cogency to *general* deterrence (discussed below from [24]–[28]).
>
> [emphasis in original]

(A) THE THEORY OF "UNDETERRIBILITY"

79 In my view, the theory of "undeterribility", as canvassed by Nigel Walker and Nicola Padfield in *Sentencing: Theory, Law and Practice* (Butterworths, 2nd Ed, 1996) at p 99, is of keen relevance to the present case. As the learned authors point out, there are some afflictions or ailments which render deterrence specific to the offender futile. In particular, they state that "[m]ental illnesses can preoccupy or mislead sufferers to an extent that makes the consequences of their actions irrelevant".

80 Kleptomania can rightly be considered one such ailment. By definition, it is an *impulse control disorder* which subjects the sufferer to an intense and almost unbearable desire to steal. Further, kleptomania is thought to have a biological cause – this only serves to substantiate the point that the sufferer may not be fully able to control his or her actions prior to and while committing the offence.

Accordingly, once kleptomania is properly established, it must be accepted that the deterrence specific to the offender must necessarily be limited, because his or her future *actual commission of the offence concerned* is not primarily deterred.

81 In saying this, I am fully conscious that there are some *dicta* in the local cases which suggest that the concept of "undeterribility" must be given little weight. For example, in the High Court case of *Tok Kok How v PP* [1995] 1 SLR 735 ("*Tok Kok How*"), Yong CJ held that a psychiatric report on the appellant stating that he was sexually inexperienced and naïve, and was too easily aroused when in close proximity to a woman, carried no mitigating force. The appellant in that case had pleaded guilty to a charge of using criminal force on the complainant intending or knowing it likely to outrage her modesty under s 354 of the Penal Code. In dismissing the appellant's appeal against the District Court's sentence of nine months' imprisonment and three strokes of the cane, Yong CJ remarked (at 737–738):

> Finally counsel tendered to this court a psychiatric report on the appellant dated 5 January 1995. Having perused the report with care, I could accord it no great weight. The main thrust of the report appeared to be that the appellant, being sexually inexperienced and naive, was too easily aroused when in close proximity to a woman. This factor in itself, however, carried no mitigating force. It is often said in mitigation that an accused could not help himself, that he gave in to certain impulses because of some sad defect in his personality or upbringing. Such arguments, to my mind, are wholly unmeritorious in most cases; for as I stated in *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305:
>
> > The whole purpose of the law is to maintain order and discipline; and that is most necessary precisely when the citizen might be inclined to act to the prejudice of good order.

82 I agree with Yong CJ's observations and determination in that case. The psychiatric report and mitigation plea appeared contrived and flimsy. However, Yong CJ's statement cannot be, and could not have been, regarded as stating a general proposition of law. Indeed, Yong CJ himself clarified that "such arguments", referring to arguments that the offender could not help himself because he gave in to certain impulses, were only wholly unmeritorious in "most cases", as opposed to *all* cases. In any event, as is evident from the summary of the psychiatric report tendered in *Tok Kok How* (*ibid*), the appellant was not suffering from a clearly diagnosed and recognised psychiatric disorder, such as kleptomania. As such, one should be slow to extend the reach of Yong CJ's *dictum* in *Tok Kok How* beyond the proper confines of the facts of that case to cases involving properly diagnosed serious psychiatric disorders.

(B) THE CORRELATION BETWEEN PRIMARY AND SECONDARY SPECIFIC DETERRENCE

83 Returning to the context of kleptomania, I readily accept that the biological cause of kleptomania permits it to be viewed from a different perspective. Precisely because the cause of kleptomania is known, or thought to be known (see [66] above), and treatment modalities can be prescribed to limit, or even cure, the extent of kleptomania, the onus must therefore be on the sufferer to stick religiously to his or her treatment. If the sufferer knows that he or she is likely to re-offend and yet violates the treatment programme designed for him or her with impunity and total disregard, it would be right for the concept of specific deterrence to bite and provide the discouragement necessary for the offender not to skip future treatments. In this sense, the principle of specific deterrence, in cases of this sort, acts as a *secondary* as opposed to a primary source of deterrence or discouragement. Once it is accepted that deterrence specific to the actual commission of the offence concerned is minimal, because of the onset of some impulse control disorder which renders the *commission* of the particular offence "undeterrable", it must become apparent that the

concept of specific deterrence acts as a form of secondary impetus to discourage the offender from omitting to do something which he or she ought reasonably to know can stop the future actual commission of the offence concerned.

84 It would, however, be wrong to *equate* such secondary specific deterrence *squarely and completely* with primary specific deterrence unless it can be comprehensively concluded that there is an absolute causal link, in the context of kleptomania, between the omission of the treatment *and* the commission of the offence. In my view, after hearing the psychiatric evidence of both Dr Phang and Dr Tan, it cannot be said for certain that there is a complete correlation between omission of treatment and the commission of the offence. At best, it can only be said that treatment will lead to an *improvement* in the sufferer's condition, but complete eradication cannot be said to be absolute and certain, at least certainly not in the treatment phase.

85 Part of the reason why this is so, as both psychiatrists readily acknowledge, is that the road to recovery for a kleptomaniac is not a straight one and does not, as a rule, describe "a smooth, positive trajectory" but instead more accurately describes an "upward but jagged trajectory" (see [42] and [46] above). Furthermore, as is clear from Dr Phang's report dated 22 February 2007, the respondent, in the fullness of time, could hope to achieve only "satisfactory" recovery from the mental disorder (see [42] above), whereas Dr Tan's experience revealed a complete recovery rate of around "two to three patients out of about seven to eight cases" (see [69] above). Accordingly, it does not follow inexorably that an extended course of treatment, let alone a single session of therapy or the single dosage of medication, can and will lead to the complete eradication of the disorder and hence shut out completely the possibility of re-offending. In other words, the causal link between the omission to adhere to treatment and the actual commission of future offences cannot be conclusively proved. Accordingly, I do not think it is appropriate for specific deterrence, in its *secondary* manifestation, to apply with *equal force* as in its primary manifestation in cases involving kleptomania.

(C) SPECIFIC DETERRENCE TO ASSUME GREATER RELEVANCE IN CASES INVOLVING KLEPTOMANIACS WHEN TREATMENT IS PERSISTENTLY DISREGARDED

86 However, that is not to say that specific deterrence does not apply *at all*. Indeed, one would be hard put to explain the previous decisions of the local courts involving kleptomaniacs if this were not so. In my view, it is right that the courts give some effect to the tangible, and yet incomplete, causal link between treatment and re-offending. While the complete elimination of re-offending is not certain, this does not mean that the courts will allow kleptomaniacs to skip their treatment and steal with impunity. That clearly cannot be right let alone tolerated. What the law seeks to achieve is to recognise the decreased relevance of specific deterrence and tailor the sentences appropriately to reflect this, bearing in mind that with treatment there can be an improvement. As such, the more persistently the kleptomaniac skips or disregards his or her treatment, leading to eventual re-offending, the stronger will be the relevance of specific deterrence, in its secondary sense.

87 Such a proposition may be distilled from the local cases dealing with kleptomaniacs. For example, in *Siauw Yin Hee v PP* [1995] 1 SLR 514 ("*Siauw Yin Hee*"), the appellant was convicted of theft under s 380 of the Penal Code. That was his *ninth* conviction for theft. At sentencing, the District Court was informed that the appellant had a record of eight similar convictions and that on seven out of the eight occasions; he had been punished only with one day's imprisonment and a fine. In mitigation, the appellant argued that he suffered from frequent depression which created in him the urge to shoplift. The district judge sentenced him to six months' imprisonment and the appellant appealed arguing that the sentence was manifestly excessive having regard to his depressive illness.

88 In dismissing his appeal, Yong CJ in the High Court held that public interest requires a stiff

sentence to be imposed notwithstanding that the appellant had been receiving psychiatric treatment in his respect of his depression and his depression-induced kleptomania. Yong CJ noted that in that case, the appellant suffered from bouts of depression which induced in him (so it would appear) a form of kleptomania. In respect of these symptoms he had been receiving medical attention (albeit not continuously) since January 1988, after his fourth conviction for shoplifting. Despite this, four similar convictions (not including the one in that case itself) followed with a disturbing regularity. It appeared to Yong CJ that "no particular effort had been made by the appellant to exercise self-restraint over his recurring impulse to steal or, for that matter, to seek more extensive counselling and treatment" (*Siauw Yin Hee* (at 516, [8])). As such, in response to counsel's mitigation that the appellant's history of depression had caused him to commit the offence "out of impulse", Yong CJ commented (at 516, [9]) that:

> … the demands of public interest must also be weighed in the balance. If our criminal law is to have any protective ambit over the lives of ordinary citizens, persons such as the appellant cannot be allowed to deal with their personal problem by giving vent to their kleptomaniac tendencies with abandon; or indeed, by resorting to any other form of crime. I agreed, therefore, with the district judge's view that:
>
> > So long as [the appellant] is not able to stop himself from committing thefts he cannot be allowed to have freedom of movement to keep on committing thefts.

89 Several points emerge from the decision in *Siauw Yin Hee*. First, it appears that a proper diagnosis of kleptomania was not fully made. From the report of the decision, Yong CJ himself was not convinced that the appellant in that case suffered from kleptomania, as is evident when he used the expression "so it would appear" when describing the appellant's condition of kleptomania. Indeed, the three reports tendered by the appellant's psychiatrist to the District Court appeared to suggest the appellant suffered from depression which, when particularly acute during periods of personal stress, created in him an "urge to shoplift" – the precise word "kleptomania" was not mentioned in connection with these reports in Yong CJ's grounds of decision (see *Siauw Yin Hee* at 515, [4]). Secondly, it is also apparent that the appellant in *Siauw Yin Hee* had not demonstrated any conscious effort to improve his existing treatment despite the obviousness of its ineffectiveness. Such ineffectiveness was borne out by the fact that there was no particular improvement in the condition of the appellant, since the offences from his fourth conviction onwards had followed with "disturbing regularity". In a related vein, not only had the appellant not sought to improve his existing mode of treatment; he had not sought *continuous* treatment despite having had several earlier convictions (see *Siauw Yin Hee* at 516, [8]). Accordingly, although not explicitly stated in the grounds of decision, I would regard *Siauw Yin Hee* as supporting the proposition that where the kleptomaniac has not actively sought and religiously followed his or her treatment plan, and therefore re-offends with consistent regularity, the concept of secondary specific deterrence would apply with greater relevance, requiring a more severe sentence to be imposed.

(2) General deterrence

(A) GENERAL IRRELEVANCE OF GENERAL DETERRENCE IN CASES INVOLVING KLEPTOMANIACS

90 Turning now to general deterrence, it is important to note that, particularly, general deterrence aims at educating and deterring other *like-minded* members of the general public by making an example of the particular offender: see *Meeran bin Mydin v PP* [1998] 2 SLR 522. Accordingly, in so far as the respondent in the present case is concerned, the general deterrence, if any, which emanates from her sentence, is not aimed at all future shoplifting offenders, but rather only to *kleptomaniacs* who commit such offences. Indeed, as I have said in *Tan Kay Beng v PP* [2006] 4 SLR 10 (at [31]),

the types of offences and offenders for which punishment will be "certain and unrelenting" would depend upon the corresponding interest of the public in preventing that kind of conduct and in restraining particular offenders. The essential question in the present case and in future cases involving kleptomaniacs will therefore be this: how can the public interest in preventing and restraining kleptomaniacs from shoplifting be best served and implemented?

91 The starting point would be the types of offences, and the circumstances in which such offences are committed, which the public has an interest in preventing from occurring in the future. In *Law Aik Meng* ([59] *supra*, at [24]), I listed out several examples of offences in which general deterrence assumes significance and relevance. These are as follows:

(a) offences against or relating to public institutions, such as the courts, the police and the civil service;

(b) offences against vulnerable victims;

(c) offences involving professional or corporate integrity or abuse of authority;

(d) offences affecting public safety, public health, public services, public or widely used facilities or public security;

(e) offences affecting the delivery of financial services and/or the integrity of the economic infrastructure; and

(f) offences involving community and/or race relations.

In a related vein, examples of particular *circumstances* of an offence which may attract general deterrence include:

(a) prevalence of the offence;

(b) group/syndicate offences;

(c) public disquiet;

(d) difficulty of detection and/or apprehension; and

(e) offences affecting several victims.

92 While I am aware of my own caveat in *Law Aik Meng* ([59] *supra*, at [26]) that "one must always bear in mind that such broadly defined areas of misfeasance attracting general deterrence as a sentencing consideration are by no means mutually exclusive or cumulatively exhaustive", I am hard pressed to see any example in the lists above which conveniently lend its relevance to the present case. Perhaps one could argue that the prevalence of the offences by the respondent and the difficulty of detection and/or apprehension in shoplifting cases could warrant the imposition of a sentence which properly reflects the need for general deterrence, but given the general "undeterribility" of kleptomania (see [79] above), any general deterrence would be futile.

93 Indeed, given the very low, even minuscule, incidence of kleptomania among apprehended shoplifters (see [67] above); I doubt very much that general deterrence is even necessary in cases such as the present. There is no *general* public interest in adopting excessive measures to restrain this very small number of kleptomaniacs from offending. The very small number of kleptomaniacs

serves also to show that the courts will be slow to accept any claim of kleptomania unless such diagnosis has been carefully made after an extensive examination by a qualified psychiatrist.

94 In my view, therefore, the consideration of general deterrence in cases involving kleptomaniacs must necessarily be very small. Such a proposition is well supported by the authorities. For example, in *Ng So Kuen Connie v PP* [2003] 3 SLR 178, Yong CJ in the High Court held (at [58]), following *R v Wiskich* [2000] SASC 64, that the element of general deterrence could and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence:

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

More recent authorities pointing to this same proposition include *PP v Lim Ah Liang* [2007] SGHC 34 (at [40]), *PP v Lim Ah Seng* [2007] 2 SLR 957 (at [49]–[51]), and *PP v Aguilar Guen Garlejo* [2006] 3 SLR 247 (at [44]).

95 However, there is a caveat to this: the element of general deterrence could and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence *unless* the offender in question has skipped his or her treatment plan persistently. If so, the same reasoning which I have adopted with respect to specific deterrence would apply, in that the general deterrent message sent out would then be that kleptomaniacs cannot expect to skip their treatment programmes and then steal, with the courts forgiving them everything. Even then, the necessity of general deterrence would still not be very significant given that the incidence of kleptomania, as both Dr Phang and Dr Tan have testified, is at best minuscule. However, in the normal case whereby the offender concerned has actively sought regular and extensive treatment, and has shown considerable effort in avoiding re-offending, then I think that the need for general deterrence would be fairly low or even nil.

(B) GENERAL IRRELEVANCE OF GENERAL DETERRENCE DOES NOT EXTEND TO NON-KLEPTOMANIACS OFFENDERS

96 Having said this, one should not misunderstand what I have said to mean that the courts will come down lightly on all shoplifters. As I have emphasised above (at [95]), the general deterrent message (or lack thereof) in cases involving kleptomaniacs would be restricted to this class of offenders; it does not extend to the wider spectrum of would-be shoplifters. There is obviously a very strong public interest in discouraging would-be shoplifters, free of any related psychiatric ailment, from committing theft on a recurrent basis. I want to make it as plain as a pikestaff that the courts will not hesitate to inflict the full force of the law on such shoplifters, especially if they have demonstrated a propensity to re-offend in clear disregard of previous convictions.

Rehabilitation

97 I now touch on the consideration of rehabilitation. With the above facts about kleptomania in mind, it is clear to me that rehabilitation must form the primary focus for cases of this nature. Mirko

Bagaric astutely notes in *Punishment and Sentencing: A Rational Approach* (Cavendish Publishing Ltd, 2001) ("*Punishment and Sentencing*") at p 151 that rehabilitation, like specific deterrence, aims to discourage the commission of future offences by the offender. The radical difference between the two lies in the means used to encourage desistence from crime. Rehabilitation seeks to *alter the values of the offender* so that he or she no longer desires to commit criminal acts by way of reducing or eliminating the factors which contributed to the conduct for which the offender is sentenced.

(1) Purpose of rehabilitation

98 Thus, when it is recognised that deterrence, especially specific deterrence, is of limited effect in cases involving kleptomaniacs, the proper course of action which the courts ought to take, is to consider which of the other principles should take precedence in trying to advance the greater public interest, to help keep the kleptomaniac from re-offending. In this regard, Bagaric in *Punishment and Sentencing* notes that despite rehabilitation's overt concern for the welfare of the offender, this is not indicative of the underlying aim of rehabilitation: it is not so much a case of what can be done for the offender, as what can be done to him or her for the sake of the rest of us. Opponents of rehabilitative sentencing have criticised it precisely on this basis: despite the humane exterior of rehabilitative techniques, they are anything but caring, since they are concerned not with the offender's needs, but are simply a means of improving our lot by reducing recidivism.

99 In my view, rehabilitation must necessarily assume both public and individual dimensions. While it is certainly true that the courts perform a public function of protecting the public interest, it is quite another to say that the courts do this exclusively, with any individual interest purely a matter of inadvertent incidence rather than deliberation. Such a view is difficult to square with the individualised nature of sentencing; surely when the courts tailor sentences for individual offenders, there comes a point where the public interest remains constant, such that the individual interest takes over predominantly, even exclusively. The present case provides an excellent example of the interplay between public and individual interests in the arena of rehabilitation. If, for instance, the public interest is in reducing recidivism vis-à-vis the respondent, then it is the way the court chooses to give effect to this public interest by means of rehabilitation that then constitutes the broad advancement of the public interest; however, the specific manner in which the court chooses to give effect to the rehabilitation of the individual focuses almost exclusively on which manner of reform is best suited for the offender. In cases such as this, it would be almost artificial to regard the entire exercise as advancing solely the public interest, with any benefit accruing to the offender to be only of incidental interest.

(2) Suitability of rehabilitation

100 The suitability of rehabilitation for the offender concerned will involve a consideration of many factors. While there will be offences which are so serious that rehabilitation must be considered to be of very little significance, the offences typically associated with the condition of kleptomania usually will not come within these offences. Instead, the psychiatric disorder that is kleptomania, readily lends itself to the accepted proposition that people who commit offences while mentally disordered, should not be dealt with in the same way as other offenders. As Prof Andrew Ashworth notes in *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) ("*Sentencing and Criminal Justice*") at p 370, at the sentencing stage, there is a sound legal basis to regard some mentally disordered offenders as either deserving of mitigation, or requiring treatment as opposed to punishment. This approach, according to Ashworth, can be rationalised on the basis that such offenders may not have sound powers of reasoning or control, and may therefore not fully absorb the objectives of punishment or may not deserve it.

101 As I have discussed above in relation to deterrence, sentencing also has a communicative element, which cannot be adequately realised where it is the offender's understanding or control which is impaired. Accordingly, for cases involving kleptomania, the orientation for sentencing must generally be towards treatment and rehabilitation.

(3) Options for rehabilitation

102 The options for rehabilitation in cases of this nature are decidedly few. The courts are forced to choose between probation and imprisonment, neither of which, as Yong CJ pointed out in *Goh Lee Yin No 1 HC* (see [21] above), represented a truly satisfactory solution to the problem. Probation on terms cannot always compel the kleptomaniac to go through a comprehensive treatment programme designed for him or her. On the other hand, while Dr Phang has stated that the treatment of kleptomania could be satisfactorily continued behind prison walls, he was also quick to concede that such effectiveness would be severely compromised should the incarceration be long term.

(A) REHABILITATIVE SENTENCES IN THE UNITED KINGDOM

103 In the UK, there are specially designed sentences which are available to the court, in cases such as the present, to enhance the rehabilitative prospects of the offender. For example, a court may make a community sentence with a mental health treatment requirement under ss 207 and 208 of the (UK) Criminal Justice Act 2003. This replaces what used to be known as a psychiatric probation order, and it is subject to all the conditions that must be fulfilled if a community sentence is to be imposed. Before making this particular requirement, the court must receive a report from a duly qualified medical practitioner, and must satisfy itself that the offender's mental condition requires and may be susceptible to treatment, and that it is not such as to warrant the making of a hospital order or guardianship order. The treatment prescribed may be as a resident at a specified hospital or as an outpatient, or by or under the direction of a specified doctor or chartered psychologist, and the offender must consent to it. The requirement was formerly subject to a maximum of one year, but that limit has now been removed and it is for the court to specify the duration of the requirement. Ashworth observes in *Sentencing and Criminal Justice* ([100] *supra*) at p 373, that this order may occasionally be made in a case that might otherwise justify a substantial custodial sentence.

104 Notwithstanding the presence of such sentencing options as community orders, the controversy over the proper response to mentally disordered offenders is evident from the various sets of proposals issued in recent years in the UK. For instance, the Richardson committee in 1999 made a number of recommendations after a review of the Mental Health Act 1983: treatment ought to be given priority over punishment; a "health order" (replacing the hospital order) should be available to criminal courts; there should be wider use of interim orders; and also of community orders for treatment; a restriction order should remain, but the powers to grant leave and authorise transfer between hospitals should not lie solely with the Home Office but should also be given to tribunals; prisoners should have a right to mental health assessment; and there should be no compulsory treatment in prisons, only in hospitals. As Ashworth notes in *Sentencing and Criminal Justice* ([100] *supra*) at p 379, in autumn 2004 the UK government published a draft Mental Health Bill, with an obvious emphasis on risk and public protection, with less emphasis on diversion and treatment. It is axiomatic from these developments, that sentencing the mentally ill in other jurisdictions also remains a vexed issue that does not lend itself to any particularly satisfactory penalty or rehabilitative option.

(B) NEED FOR SENTENCING OPTIONS TO CATER TO THE REHABILITATION OF KLEPTOMANIACS OFFENDERS IN SINGAPORE

105 The healthy debate in the UK over the proper response to the proper sentence to be meted out to mentally disordered offenders is useful. I should state that the courts will benefit from the continual exploration of more creative sentencing options by the Legislature in order to further assist in the rehabilitation of offenders. As such, I am greatly encouraged by the recent response by the Senior Minister of State for Law, Assoc Prof Ho Peng Kee, when he provided a preview into the possible future options available to the courts (for example, short-term detention to further pave the middle ground between probation and reformative training) in reply to Mr Christopher de Souza's questions regarding the review of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) and the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("POA") (see *Singapore Parliamentary Debates, Official Report* (27 August 2007) vol 83 at para 15). However, more can surely be done, and perhaps Parliament will in the not too distant future untie the Gordian knot which currently hamstrings the courts' ability to appropriately tailor sentencing options for mentally disordered offenders.

106 Further, the courts will also greatly benefit from the mature consideration of the Prosecution before such cases are referred to court. If the underlying cause of re-offending is a real psychiatric one, what benefit can there possibly be in referring the offender time and again to the courts, whose hands are tied and have to choose only between imprisonment and probation? Surely a far more sensitive option would be to refer mentally-ill or otherwise deficient offenders to the appropriate Ministry or government agency where such cases may be more fittingly administered, as suggested by Yong CJ (see [27] above).An undertaking to faithfully observe the prescribed treatment may sometimes be obtained from the offender and his family as the quid pro quo for not pursuing a prosecution.

Incapacitation

107 It remains for me to clarify that rehabilitation only forms the primary focus in cases involving kleptomaniacs owing to the low-key *nature* of the offence which they commit, *viz*, shoplifting offences. Such offences do not seriously affect or inconvenience public. Certainly not, when generally the items stolen are usually of little value. However, this is not to say that in *all* offences committed owing to a psychiatric disease, rehabilitation must be the foremost consideration. Indeed, assuming that an offender suffers from a psychiatric disease which causes him to commit a particular heinous offence, it would surely not be correct to say that such an offender ought to be rehabilitated to the exclusion of other public interests. Rehabilitation may still be a relevant consideration, but such rehabilitation may very well have to take place in an environment where the offender is prevented from re-committing similar offences.

108 Therefore, in cases involving serious offences, incapacitation would usually form the focus of the sentencing process. In *PP v Lim Ah Liang* [2007] SGHC 34, I noted at [41] that incapacitation aims to deal with severely mentally-ill offenders in such a way as to make them incapable of offending for substantial periods of time. It is popularly referred to as "public protection" and advocates the imposition of long, incapacitative custodial sentences on "dangerous" offenders when the potential risk to prospective victims is substantial. In my view, such a consideration would be highly relevant in cases involving serious offences notwithstanding the fact that the offender suffers from an impulse control psychiatric disorder, which causes the commission of the very offence. However, for cases involving kleptomaniacs, incapacitation cannot be said to be an important consideration, given the relatively light impact the shoplifting offences which the kleptomaniac commits has on the general public and, just as significantly, the minuscule number of such offenders in Singapore.

Previous sentencing precedents

109 Having assessed that rehabilitation must form the key focus in sentencing kleptomaniacs and

that deterrence, both specific and general, must play a penumbral role, unless the offender in question has skipped his or her treatment programme intentionally, it now remains for me to examine the sentencing precedents briefly. I should also restate my view that incapacitation ought to play no significant role in most cases involving kleptomaniacs. In assessing the adequacy of a lower court's sentence, due regard may be given to previous sentencing precedents involving similar facts or offences, for the simple reason that these cases give an indication of the appropriate sentence to be imposed. That said, such precedents are only *guidelines* as each case, of course, ultimately turns on its own facts: see, for example, *Viswanathan Ramachandran v PP* [2003] 3 SLR 435 at [43]; While references to such "benchmarks" facilitate consistency and fairness by providing a touchstone against which subsequent cases with differing degrees of culpability can be accurately determined, *it must be reiterated that they are not cast in stone, nor do they represent an abdication of the judicial prerogative to tailor criminal sanctions to the individual offender*: see *Dinesh Singh Bhatia s/o Amarjeet Singh v PP* [2005] 3 SLR 1 at [24].

Singapore cases

110 It appears that in Singapore's recent legal history, there have only been three offenders who have been medically assessed to have kleptomania (including the respondent) that have been dealt with by the courts.

(1) *Siauw Yin Hee*

111 In *Siauw Yin Hee* ([87] *supra*), the facts of which I have already set out above, the offender was sentenced to six months' imprisonment. As I mentioned above, the reason why the offender in *Siauw Yin Hee* was sentenced to six months' imprisonment, as opposed to being placed on probation or sentenced to a shorter term of imprisonment, was due to his blatant and sustained failure to seek treatment notwithstanding the fact that he had been convicted of similar offences on numerous occasions before (see [89] above).

(2) *PP v Zhang Jing*

112 In *PP v Zhang Jing* [2006] SGDC 82 ("*Zhang Jing*"), the accused pleaded guilty in the District Court to two charges under s 379 of the Penal Code for offences committed on 1 December 2005 and 24 March 2006. The accused was assessed on 6 April 2006 by Dr Thong Jiunn Yew ("Dr Thong") of the Department of Forensic Psychiatry to be suffering from kleptomania. Following her conviction on the two charges, the Prosecution applied for two outstanding charges, also for thefts (in District Arrest Case No 11809 of 2006 and District Arrest Case No 53781 of 2006), to be taken into consideration for sentencing. The accused admitted to the commission of the offences in the two charges and gave her consent for them to be taken into consideration for sentencing.

113 In mitigation, the District Court was informed, *inter alia*, that the accused who is a Chinese national came to Singapore in 1991. She had trouble adapting to life in Singapore as she had never before left her family for a long period of time. In 1993 she committed shoplifting for the first time and in 1996 committed a similar offence, after which she was sentenced to three weeks' imprisonment. After her second offence, she consulted a psychiatrist and was diagnosed with "depression". She continued seeing the psychiatrist until July 1999. In 2002, she again committed two more thefts in September and was sentenced to imprisonment for nine months. Sometime in 2003 she was deported to China. In April 2005, she returned to Singapore and on 1 December 2005 committed the offence in District Arrest Case No 53781 of 2006. After committing the offence she restarted treatment and on 3 December 2006, Dr Simon Siew, a consultant psychiatrist, prepared a report wherein he informed that the accused suffered from kleptomania as a result of her "obsessive compulsion disorder" and

was in need of treatment which he would be restarting.

114 In a report by Dr Thong dated 26 January 2006 (see *Zhang Jing* ([112] *supra*) at [8]), it was reported that the accused had in 1997 been:

> … assessed by a psychiatrist in Woodbridge Hospital. She was diagnosed to have depression and the psychiatrist opined that her shoplifting episode is absent-minded response to stress. *She defaulted follow up after that*. She was again remanded in the forensic ward from 18.06.2002 to 09.07.2002 again for shoplifting … *The accused said that over the years, she tended to default on her medication, as she was apprehensive of the potential side effects*.

115 In sentencing the accused to a total sentence of nine months' imprisonment, the district judge stated that the accused in the case at hand was aware of her condition and had received treatment since 1996 after she was arrested the second time for committing theft. In spite of being sentenced to imprisonment for three weeks, the district judge noted that she was not fully persuaded to follow up on her treatment and re-offended. In particular, the accused had defaulted on her medication, not because of forgetfulness or because she was cured or believed she was cured, but because she was apprehensive of potential side effects. Due to her default, she committed two more thefts and was sentenced to imprisonment for nine months in 2002. Accordingly, the district judge noted (*Zhang Jing* at [17]–[18]):

> The circumstances when she returned to Singapore would be that accused and her husband were aware of the fact that accused had a "mental disorder" that made her susceptible to committing theft. They were aware that she had been convicted on three previous occasions and aware of her need for treatment as the offence in 2002 was committed when she defaulted on her medication. They were aware that the commission of the offence in 2002 had resulted in a 9 month imprisonment term. In spite of all of the above, nothing was done to prevent her from committing further thefts (there is reference in Dr Thong's report, to her committing thefts even when she was in China). On the 1.12.05, she re-offended again when she committed the offence at 4.00 pm at the NTUC Tampines at Kowloon Centre and then again at 6.00 pm at OG Shopping Mall at the Albert Complex before she was arrested.
>
> After she was arrested on the 1.12.05, the accused restarted treatment with Dr Simon Siew. Dr Siew in his report dated 25.1.06 listed the medication prescribed for the accused and said that she would need supervision with regard to taking of her medication and her husband would have been aware of this need for supervision, especially since she had herself revealed to Dr Thong (report of Dr Thong dated 26.1.06) that she tended to default on her medication as she was apprehensive of potential side effects. It would appear that inspite of this awareness there was insufficient supervision and, on the part of accused herself a lack of sufficient commitment to take medication as on the 24.3.06, she committed thefts at two shops in the Takashimaya Shopping Centre (Charges in DAC 11809/06 & DAC 11810/06).

116 As such, the District Court was of the view that the rehabilitation prospects of the accused were dim and sentenced her to a total imprisonment term of nine months.

117 Just as in *Siauw Yin Hee* ([87] *supra*), the decision in *Zhang Jing* ([112] *supra*) may be confined to its own facts in that the accused had apparently ignored the treatment plan that had been devised for her and had relapsed.

(3) *PP v Zhang Jing No 2*

118 The accused in *Zhang Jing* ([112] *supra*) eventually found herself in court again. On 27 February 2007, the accused, whilst she was at "DFS Gallery", removed two "Swatch" watches, valued at $119 and $159 respectively, from the display and placed them inside her handbag. Thereafter she left the store without paying for the watches. She repeated the act the next day at the same store. However this time when she removed another "Swatch" watch valued at $259 from the display she was spotted by a sales assistant of the store. Hence, when the accused was attempting to leave the store without paying for the watch, she was detained. The "Swatch" watch was recovered from her handbag. She then admitted that she had also stolen two "Swatch" watches from the store the day before. In the result, she was convicted of two charges under s 380 of the Penal Code, and consented to four remaining similar charges for offences of theft in dwelling under s 380 of the Penal Code to be taken into consideration for the purpose of sentencing ("the TIC charges").

119 Upon her release from prison, the accused went back to China to seek treatment. As she was unable to find any suitable institution to rehabilitate her, she returned to Singapore. She approached the Institute of Mental Health and was given an appointment in mid-November 2006. In the meanwhile, she had to stay at home since she was unable to work. Overcome with anxiety and urges associated with kleptomania, she went out on 5 November and stole some foodstuff which she disposed of and did not consume. These represented three of the TIC charges.

120 The accused thereafter started regular consultation and treatment with Dr Samuel Cheng ("Dr Cheng") at the Institute of Mental Health from November 2006. Subsequently she was started on medication after consultation with Dr Cheng but could only be scheduled for counselling and psychotherapy in April 2007. She diligently took her medication, but on 27 February 2007, she had an appointment in town. While she was there, she was overwhelmed by a sudden urge to steal and succumbed to it by taking two watches on display at DFS Gallery at Royal Plaza without even contemplating the value of the items.

121 She started psychotherapy in April 2007 and she claimed that she had overcome her impulses to shoplift since then. In *PP v Zhang Jing* [2007] SGDC 224 ("*Zhang Jing No 2*"), the District Court sentenced the accused to imprisonment of nine months on each of the two proceeded charges and ordered the sentences to run concurrently giving a total imprisonment sentence of nine months. For reasons which are not particularly cogent, the court appeared to have placed considerable emphasis on deterrence as the key sentencing consideration.

122 This case is currently the subject of an appeal before me and I shall deliver my judgment in due course. However, what is evident from these cases is that the lower courts have seen it fit to impose a heavier sentence when it is the offender's own reckless disregard of his or her treatment programme which has led to a severe relapse of the kleptomania.

Other jurisdictions

123 In *Law Aik Meng* ([59] *supra*, at [16]), I warned that sentencing courts must be extremely circumspect when devising *sentencing benchmarks* based on another jurisdiction's public policy or interest. Indeed, given the differences in culture, community values, public policy and sentencing attitudes in different jurisdictions, undue and unthinking deference by local courts to the sentencing benchmarks pronounced by foreign courts could well result in sentences inconsistent with and ill-suited to the administration of criminal justice in Singapore. However, when one looks to other jurisdictions principally to understand the conceptual basis for their sentences, that could be helpful in developing the local case law on sentences in similar offences, especially since, in the context of the present case, there have only been three known kleptomaniacs apprehended and charged in Singapore recently. A review of other jurisdictions has, however, also yielded little in terms of cases

involving kleptomaniacs.

(1) Australia

124 In *R v Kevin John O'Connell* [2005] NSWCCA 265, the New South Wales Court of Criminal Appeal was confronted with an offender diagnosed with kleptomania. The accused had suffered for many years from a major depression, a condition which in his case appeared to have been at least partly hereditary. He had been receiving medical treatment for this condition for a long time, not fixed with certainty, but dating from the 1980s, including psychiatric treatment since 1994. This condition was complicated by an alcohol overuse problem, and kleptomania (properly so-called), and the depressive state had been aggravated both by the circumstances of his dismissal, and by his having lost some $400,000 around 1988 in consequence of a misguided investment. At one stage, his depression was so acute that he was bedridden.

125 The accused in that case had pleaded guilty in the Local Court to a number of charges, and adhered to those pleas in the District Court. There were nine charges of stealing from a dwelling (maximum penalty of seven years' imprisonment: Crimes Act 1900, s 148), eight charges of larceny (maximum penalty of five years' imprisonment: Crimes Act 1900, s 117), two charges of receiving stolen goods (maximum penalty of ten year's imprisonment: Crimes Act 1900, s 188), and one charge of possessing an unregistered firearm (maximum penalty of two years' imprisonment and/or a fine of $5,500: Firearms Act 1996, s 36). In addition six cases of being unlawfully in possession of property were taken into account (maximum penalty of six months' imprisonment and/or a fine of $550: Crimes Act 1900, s 527C), and ten further cases of receiving stolen property. The accused had only one prior conviction, not suggested to be relevant to the case at hand: in 1978 he was convicted of driving with the prescribed concentration of alcohol, fined $150 and disqualified from driving for 48 hours.

126 Judge Finnane QC imposed these sentences: (a) on one of the charges of stealing from a dwelling, a sentence of 23½ months' imprisonment, with a non-parole period of 18 months, suspended pursuant to the provisions of s 12 of the Crimes (Sentencing Procedure) Act 1999, on terms requiring the accused to enter into a bond generally to be of good behaviour for the period of 23½ months, and to require him to pay $16,000 to the Director of Public Prosecutions, by way of compensation; (b) on one of the charges of receiving stolen property, an identical sentence, to be served concurrently with the first sentence mentioned; (c) in relation to the firearms offence, a bond to be of good behaviour for a period of 12 months, imposed under s 9 of the Crimes (Sentencing Procedure) Act 1999; and (d) in respect of the remaining charges a bond to be of good behaviour for the period of five years, imposed under s 9 of the Crimes (Sentencing Procedure) Act 1999. Being dissatisfied with all the sentences imposed by Judge Finnane, except for that involving the firearms offence, the Crown appealed.

127 In dismissing the appeal by the Crown, Brownie AJA for the New South Wales Court of Criminal Appeal noted that the accused had said in evidence, and which evidence Judge Finnane accepted, that he took the various items in consequence of his psychiatric state – his depression, coupled with his kleptomania. There was evidence describing what psychiatrists meant by that term, and the evidence concerning the accused fitted him into the pattern so described. Outlining the reasons for Judge Finnane's decision, Brownie AJA stated (at [18]–[19]):

> His Honour reviewed the medical evidence, as well as the evidence of the appellant and his wife and his sister, and apparently accepted this evidence, concerning the extent and the progress of the [accused's] illness; and he noted the [accused's] evidence that he expected and deserved to be punished, that he was upset and disgusted about his own actions, and that he felt for the victims. His Honour also noted that the [accused] had returned to his church, after the absence

> of thirty years, and how he was then engaged generally. At the time of sentencing, the [accused's] wife had been tentatively diagnosed as suffering from a secondary pancreatic cancer. (The evidence on appeal confirmed that diagnosis. She is now terminally ill, and in great need of assistance, which he is providing.) His Honour also accepted the [accused's] evidence that he would never offend again, and that, in the circumstances, he would have no opportunity to offend in the same way again. His Honour noted that the [accused] had received extensive psychiatric treatment after the detection of his offences, including a period of ten weeks in hospital, and that that treatment appeared to have been quite successful, so far as it went; and there was a favourable Probation and Parole Report.
>
> The judge then found that the whole series of offences (which he said, erroneously, had occurred over a period of twelve months or close to that, when in fact they occurred over a period of more than twenty seven months) should be regarded as being caused by deep psychiatric problems emanating from depression, in which kleptomania was involved, and that in no instance was the [accused] motivated by a belief that he would materially benefit.

128 In the result, having found no appealable error, the New South Wales Court of Criminal Appeal dismissed the Crown's appeal, implicitly endorsing Judge Finnane's approach of attributing great emphasis to the accused's lack of culpability owing to his kleptomania, and also for giving credit to the accused's effort in rehabilitation after his conviction.

(2) Canada

129 In *R v Kemp* (1978) 2 YR 93, the accused lawyer was convicted of theft over $200. The accused had been stealing from offices in his office building and was described as "kleptomaniac". In outlining the grounds of his decision, Deputy Magistrate Stuart first stated that there were three important aspects which must be considered in sentencing: (a) the nature of the crime; (b) public interest; and (c) the particular nature and character of the accused.

130 As for (a), the learned deputy magistrate, after careful consideration of the psychiatrist's report, and in considering submissions made by the Crown and the defence counsel, was persuaded that the accused was suffering from a form of mental illness, *ie*, kleptomania. The deputy magistrate regarded that kleptomania was directly related to elements constituting commission of the offence. In light of all the circumstances, (the significant credit balance in the trust account, the nature of the items stolen, the overall character of the accused), the thefts were best explained and principally consistent with the psychiatrist's assessment that the actions were a product of a character neurosis defined as kleptomania, with the result that the mental illness in question did affect the capacity of the accused to control his actions to a significant degree and denied any suggestion of premeditation, and the nature of the crime did not warrant a heavy sentence. As for (b), the deputy magistrate considered that there was little need for both general and specific deterrence given that the circumstances of the crime especially in light of the psychiatrist's report were in no manner suggestive of latent criminal tendencies. Finally, as for (c), the deputy magistrate was persuaded, *inter alia*, that the prospects of rehabilitation were extremely high and that the likelihood of repetition of similar crimes would be quite remote if an appropriate course of treatment was followed.

131 Ultimately, the deputy magistrate stated that rehabilitation, and not punishment, should be the predominant consideration in sentencing for cases of this nature (at [50]):

> Unless the crime is so significantly serious and the prospects of rehabilitation so abysmally slight that justice and the public interest can only be served by removing the offender from society, rehabilitation, not punishment, should be the predominant consideration in sentencing. Whenever

there is a prospect for rehabilitation, the severity of the punishment levied should not be of such consequence as to negate the rehabilitative prospects.

In the result, while emphasising that the accused was suffering from a serious mental illness that was a causal element in the crime and required treatment, the deputy magistrate granted the accused a conditional discharge and placed him on two years' probation.

132 In *R v Seguin* (1994) WL 1706750 (Ont Prov Div) ("*R v Seguin*"), a kleptomaniac was sentenced to probation with a suspended sentence after the Ontario Court of Justice (Provincial Division) noted that incarceration would not prevent further offences in view of the accused's extremely lengthy record. Nicholas Prov J noted that the accused was heavily involved in community work and that society was better served by having her continue to help others than to place her in jail for a further short period of time, when incarceration had not prevented her from re-offending.

133 In *R v Elaschuk* [2001] 4 WWR 725, the accused was similarly charged with theft after being caught shoplifting in a grocery store. The accused suffered from a multitude of mental disorders, including kleptomania. However, the issue of sentencing did not arise as the Alberta Provincial Court, while finding that the accused had committed the offence charged, nonetheless held that she was not criminally responsible because at that time, she was suffering from a mental disorder so as to make her exempt from criminal responsibility, pursuant to s 672.34 of the Criminal Code of Canada.

134 Accordingly, it appears that the Canadian approach towards kleptomaniacs is a fairly light-handed one, even where there is a record of re-offending, although it might be said that in *R v Seguin* ([132] supra), the accused's heavy involvement in community programmes suggests that the case can be confined to its own facts. In particular, Deputy Magistrate Stuart's quoted comments (see [131] above) reflect the primary focus the Canadian courts give to rehabilitation in kleptomaniac cases. This also, as I stated above, shows that incapacitation is of almost no relevance in cases involving kleptomaniacs because the offence which they commit will almost never be described as "significantly serious" and thereby necessitate removal from society.

(3) Hong Kong

135 Finally, I turn to Hong Kong. In *HKSAR v Ngai King Ying* [2003] HKCU 1195, the appellant pleaded guilty to one charge of theft and was sentenced to two months' imprisonment. She appealed against that sentence to the High Court. The admitted facts were that the appellant was seen in a store taking some tape, a stainless steel vacuum flask, four light bulbs and an adapter, which she placed inside her bag, as well as a chopstick holder, which she paid for at the counter. She was intercepted outside the store and admitted to the theft. In allowing the appeal and varying the term of imprisonment to one of a suspended sentence, the deputy judge noted that the appellant was suffering from dysthymia and kleptomania. While the appellant had a lengthy criminal record for theft, the deputy judge was prepared to give her one more chance and thus allowed the appeal.

(4) Summary of the approach of other jurisdictions

136 It would be fair to say that the examination undertaken above has shown that other jurisdictions take a decidedly enlightened approach towards kleptomaniacs, even when they have had a long record of re-offending. These jurisdictions appear to have given primacy to the absence of a causal link between the act of theft and the criminal intent of the offender due to the onset of kleptomania. They also do not appear to attribute much weight to the possibility of the offender seeking treatment for his ailment, and are seemingly prepared to give the offender chance upon chance to improve notwithstanding the lack of effort on the offender's part. Perhaps part of the reason why these

foreign courts are so reluctant to order the incarceration of the offender, despite repeated re-offending, is due to the realisation that long-term imprisonment serves little purpose in the rehabilitation of the offender, which itself represents the greater public interest, that is to say, to prevent or ameliorate recidivism.

General framework for dealing with cases involving kleptomaniacs

Probation normally for properly diagnosed kleptomaniacs

137 In view of the general principles, I propose the following general analytical framework for future cases involving kleptomaniacs. First, the court must be satisfied that the offender concerned has been rigorously diagnosed as suffering from kleptomania by an independent psychiatrist. After this is judicially assessed to be correct, the starting point must necessarily be that rehabilitation forms the primary focus of the sentencing process such that deterrence, both specific and general, must necessarily play a significantly more muted role. Probation will usually be imposed regardless of the value of items stolen. Once it is properly diagnosed that the offender is a kleptomaniac, then the value of the items stolen is of little concern since kleptomaniacs, as the psychiatric experts have testified, steal items which are near them at the onset of their impulse to steal, and such items may or may not be expensive. The value of the item stolen does not, in this sense, add to the culpability of the kleptomaniac.

138 This will also usually be the case even if the offender has re-offended, if such re-offending can be shown to be part of the "jagged trajectory" to recovery (see [46] above). There must be a firm commitment on the offender's part to his or her treatment programme. The courts must be very slow to inflict more pain than necessary on an offender who is already afflicted with a chronic mental condition fortunately unknown to the great majority of us, and who is already trying his or her level best to recover. In this sense, the courts must always bear in mind that the road to recovery for kleptomaniacs is not a smooth one. It must be better appreciated and understood that kleptomaniacs may, unfortunately, suffer a relapse owing to their peculiar vulnerability and sometimes even *notwithstanding* general adherence to a proper treatment programme.

Incarceration possible for re-offenders who demonstrate disregard for treatment

139 However, where the offender has demonstrated a deliberate disregard or even a lack of sustained commitment for the treatment plan devised for him or her, then some measure of specific (even general) deterrence could be expressed through the sentencing process. Alternatively, this could also be the case where the offender cannot observe a proper course of treatment (perhaps, for want of family support) or does not respond well to a community-based treatment programme. In cases such as these, an appropriate period of incarceration could still be a plausible response by the courts. Steps can be taken to devise and implement a suitable rehabilitation programme during the period of incarceration.

Sensible prosecution

140 In my view, the Prosecution ought to exercise mature reflection and measured consideration before bringing kleptomaniacs to court. While Mr Lau, on behalf of the Prosecution, alluded to the danger which the respondent (and presumably kleptomaniacs in general) posed to the retail industry, I think that such a contention is a somewhat imaginative overstatement. As I have said above, it has been established to my satisfaction that the incidence of kleptomania in Singapore is minuscule. Given the rarity of the incidence of this disorder, how could it be reasonably said that there is any clear and persistent danger posed by the respondent and/or kleptomaniacs in general to the retail industry? On

the contrary, it is in the wider public interest that they be rehabilitated sooner rather than later.

141 In fact, I would venture to suggest that the greater threat to the retail industry is the emergence of juvenile shoplifters who, unlike true kleptomaniacs, steal mainly for gain and profit or for the pure thrill of it. The Prosecution would be well aware that in the first half of this year, a total of 629 shoplifters aged seven to 19 were arrested. There were also 2,353 shoplifters nabbed in the same period, and 443 shoplifting cases were reported during the first four weeks of the Great Singapore Sale alone: see Judith Tan, "1 in 4 shoplifters is a youngster, with some aged just 7", *The Straits Times* (31 July 2007). Similarly, in a more recent article in *Today*, it was reported that a survey conducted by the Centre for Retail Research in the UK revealed that Singapore retailers lost $247m to losses incurred from mainly theft, more than half of which was a result of customer theft. The average worth of each theft was found to be $52: see Lin Yanqin, "How retail theft costs the honest buyer", *Today* (15 November 2007). Surely these "real" shoplifters are the dominant threat to the retail industry?

142 I do hope that the Prosecution will see fit to heed Yong CJ's words of wisdom towards the end of his grounds of decision in *Goh Lee Yin No 1 HC* ([20] *supra*) and realise that there is no significant public interest usually advanced by invariably referring cases like the present to the courts. The Prosecution should be slow to refer cases involving kleptomaniacs who have demonstrated a keen adherence to a prescribed treatment plan but have unfortunately succumbed to a relapse of the disorder and thereby re-offended.

143 Apart from that, the courts are presently statutorily ill-equipped to deal with cases of this nature. Indeed, if there is a probation order in place for such cases, the best course of action would be for the Prosecution to apply to the court for an extension and/or fortification of the said order.

The appropriate sentence in the present case

144 With these broad considerations in mind, I turn to the appropriateness of the sentence imposed by the district judge in *Goh Lee Yin No 2 DC* ([5] *supra*), bearing in mind that the respondent is a kleptomaniac, properly diagnosed as such by three psychiatrists, two of whom are from the public sector.

Deterrence

145 I start with the consideration of deterrence. As I have stated earlier, general deterrence assumes little significance in a case such as the present, and I shall say no more about this. As for specific deterrence, while I agree with the Prosecution that there is a need to discourage the respondent from defaulting on her treatment programme, there is no evidence before me to suggest that she has been remiss in adhering to her various treatment regimes. Indeed, both Dr Phang and Dr Tan noted that the respondent had achieved "significant progress and improvement in the past year with respect to her disorder" (see [42] and [46]] above), given the fact that she has not shoplifted for the one year prior to 20 November 2006. I cannot but give credit to the respondent for her efforts in overcoming what is a difficult psychiatric ailment which the vast majority of the population have no true appreciation of. It is true that the respondent had exposed herself to the danger of a relapse on 20 November 2006 by travelling to Raffles City Shopping Centre alone, but one must realise that the road to recovery is not a straight one and the respondent was upset with her work-related problems, given the efforts she had earlier put into complying with her treatment programme. In my view, there is no great need for specific deterrence in the present case, given that the respondent's offences can probably be attributed to an unfortunate relapse notwithstanding her unstinting efforts in seeking and maintaining her course of treatment.

146 In any event, even if specific deterrence is necessary, I think the unpleasantness of being prosecuted and concurrently subjected to a barrage of adverse publicity in the local press, with photographs of her splashed in newsprint, would have hopefully permanently etched in the respondent's mind the dangers and unpleasantness of re-offending. Furthermore, it must not be forgotten that the respondent has been *convicted* of two charges of shoplifting under s 380 of the Penal Code. The criminal record will be with the respondent for some time. That itself may also serve as specific deterrence to her. In addition, the fines amounting to $8,000 that have been imposed on her by the District Court are not insubstantial.

147 Indeed I should mention that this view in no way compromises Yong CJ's explicit warning to the respondent in *Goh Lee Yin No 1 HC* ([20] *supra*) not to re-offend. I do not think that Yong CJ would attribute much blame to the respondent for re-offending if such relapse could be shown to be an unfortunate blip in an otherwise successful treatment programme. In any case, as I have pointed out, the one day's imprisonment and fines imposed by the district judge serve to give effect to Yong CJ's warning. While not long, the sentence of imprisonment does convey the message that the courts will not shy away from enforcing previously given warnings, except that the eventual manifestation of such enforcement must necessarily be tailored to the circumstances of the case. A warning of incarceration need not inevitably translate into a long period of imprisonment for cases such as these.

Rehabilitation

148 As for rehabilitation, while I accept Dr Phang's opinion that rehabilitation could conceivably take place in a prison environment, I also have to acknowledge Dr Tan's concerns that his detailed treatment plan for the respondent could be irreversibly derailed should the respondent be sent to prison. More importantly, as Dr Tan has pointed out, there are legitimate concerns that a stint in prison could have a negative effect on the respondent's self-confidence and self-esteem and reverse her excellent progress thus far. I accept Dr Tan's views on this as he has an intimate insight into the respondent's make-up.

149 I also have to take into account the fact that the respondent has now found work at A1 Media Pte Ltd and Pagesetters Services Pte Ltd, both of which have tendered letters before me praising the respondent for her work performance and general attitude. I think that any term of incarceration would severely compromise her ability to continue working with what are clearly appreciative employers. Accordingly, I am persuaded that the respondent's rehabilitation for the present will be best continued outside of the prison walls and see no reason to disturb the sentences imposed by the District Court. Accordingly, I dismiss the Prosecution's appeal in Magistrate's Appeal No 88 of 2007.

Breach of probation order

150 Turning now to the breach proceedings in relation to Magistrate's Appeal No 112 of 2005, it cannot be disputed that the respondent has committed a further offence during the probation order. I am therefore empowered to deal with her in any manner as if she had just been convicted of the shoplifting charges for which she was placed on probation in the first place. In this respect, s 9(5) of the POA provides as follows:

> Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made that the person in whose case that order was made has been convicted and dealt with in respect of an offence committed during the probation period or during the period of conditional discharge, as the case may be, that court may deal with him, for the offence for which the order was made, in any manner in which that court could deal with him if he had just been convicted by that court of that offence.

151 Where an offender who was on a previous probation order comes before the court for breach proceedings, he is once again liable to be dealt with by the court as if he had been convicted of the offence. I do not think that s 9(5) of the POA precludes the court from sentencing the offender to probation once again. Section 9(5) empowers the court to deal with the offender in any manner in which that court could deal with him if he had just been convicted by that court of that offence. In the normal case where an offender is convicted of an offence, the court may nonetheless impose a probation order on him. This must surely be the same even when the offender is brought before the court once again. This in no way prevents the court from imposing an order of probation afresh on the offender. An imposition of a fresh probation order also means that its length is once again determined afresh by s 5(1) of the POA, *ie*, not less than six months or more than three years.

152 Given my conclusion that deterrence is not of significance in the present case, and rehabilitation is best carried out outside prison walls, I do not think it is appropriate for me to impose a term of imprisonment for the respondent's breach of her probation order. In the premises, I will impose a further probation order of 18 months. The terms of this further probation order are to be drawn up by her probation officer in consultation with Dr Tan and counsel and submitted to me for approval when they have been drawn up. The parties have liberty to apply. I must reiterate that this is not to be interpreted as a license that all and sundry can breach probation orders with impunity; indeed, the suggested approach must be confined to cases involving kleptomaniacs who are being satisfactorily rehabilitated.

Conclusion

153 Acknowledging that kleptomania is an enigmatic psychiatric disorder will assist in the future treatment of such cases by both the Prosecution and the courts. There will usually be little public interest in vigorously pursuing such cases in the courts as there is no compelling need for the law to adopt a heavy-handed approach in sentencing such offenders. So long as they have demonstrated a commitment to adhere to their treatment plan and are showing real improvement, the courts should be slow to commit them to prison for every relapse of the disorder. In coming to this determination, I have been heavily influenced and persuaded by the fact that recent legal history in Singapore indicates that only three confirmed kleptomaniacs have been subjected to the judicial process, as well as the uncontradicted medical evidence that this is a rather rare medical affliction.

154 Nothing in this judgment should, however, be interpreted as signalling a shift in the judicial approach in handling run-of-the-mill shoplifting offences – the law will continue to come down strictly on such offences. Indeed, I must emphasise that the disorder of kleptomania for future cases must only be judicially acknowledged after it has been rigorously diagnosed by a competent independent psychiatrist. Finally, I should also emphasise that in cases where the offender suffers from an impulse control disorder that may lead to the commission of further serious offences, the usual sentencing considerations of deterrence and public protection through incapacitation would usually take precedence over rehabilitation. In such cases, rehabilitation can also be effected during the period of incarceration. It goes without saying, each disorder, offender and offence will have to be assessed on its own facts before an appropriate sentence is meted out.

155 Sentencing the mentally-ill offender is one of the most difficult areas of judging. The courts have to carefully find their way in each case involving a psychiatric disorder while always remaining alive to the misuse of science. Fanciful claims that are related to the vicissitudes of life will be rejected. The sentencing path in each case is akin to treading through a minefield of sentencing principles, medical considerations and public sensitivities. The courts are often in the dark as to which is the cause and which the effect. There are, also almost invariably, a range of distinctive issues to be addressed and considered. Where does culpability begin and end? To what extent do normal sentencing

considerations come into play? How is the public to be best protected? Acknowledging that justice must be seen to be done, will there be a public concern that the courts are becoming "soft" on offenders? When does rehabilitation take precedence? What is the offender's likely adherence to the prescribed treatment and the probable outcome? How are repeat offenders to be dealt with? Unfortunately, the courts do not at present have a sufficient variety of sentencing options to tailor their sentences to the manifold issues they confront in such cases. All that can be said with confidence for now is that the existence of a serious mental disorder in an offender can affect a sentencing decision in myriad ways.

156 In the result, for the reasons given above, I dismiss the Prosecution's appeal in Magistrate's Appeal No 88 of 2007 and impose a fresh term of probation of 18 months, as soon as the terms can be settled, on the respondent in relation to her breach of her probation order resulting from Magistrate's Appeal No 112 of 2005. This will take effect upon my approval of its terms.