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

**[2022] SGHC 197**

Magistrate's Appeal No 9244 of 2021

Between

Ravindran s/o Kumarasamy

… *Appellant*

And

Public Prosecutor

… *Respondent*

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# JUDGMENT

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[Criminal Procedure and Sentencing — Sentencing — Forms of punishment — Preventive detention]
[Criminal Procedure and Sentencing — Sentencing — Persistent offenders]

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# v
# Public Prosecutor

**[2022] SGHC 197**

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22 August 2022 Judgment reserved.

**Vincent Hoong J:**

## Introduction

1 In the court below, the appellant pleaded guilty to one charge of voluntarily causing grievous hurt under s 325 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") and two charges of voluntarily causing hurt to a public servant under s 332 of the PC. An additional charge under s 352 of the PC was taken into consideration for the purpose of sentencing.

2 The district judge ("DJ") imposed a sentence of ten years' preventive detention ("PD"), backdated to the date of the appellant's arrest on 14 November 2019. The DJ's grounds of decision can be found in *Public Prosecutor v Ravindran s/o Kumarasamy* [2021] SGDC 247 (the "GD").

3 The appellant now appeals against the sentence of PD and seeks to have it substituted with a term of three years' and one month's imprisonment.

**Facts**

4 The facts pertaining to the appellant's offences are comprehensively set out in the GD. Therefore, I will only endeavour to outline the salient facts in brief.

5 On 13 November 2019 at about 9.46pm, the first victim, Musaruddin Bin Yatim was sitting outside Room 4022 located at level 4 of the Angsana Home. At about the same time, the appellant came up to level 4 where his room was located. As the appellant was walking towards the first victim, the first victim could smell alcohol on the appellant and observed that he was walking unsteadily. The appellant then moved towards the first victim and punched him three times with his right hand – on the first victim's left cheek, mouth and right eye respectively. At no point did the first victim retaliate.[1] The appellant claimed that he had consumed one tall can of Barron's beer prior to the incident.[2]

6 The first victim was subsequently conveyed to Sengkang General Hospital. His right eye could not be examined initially due to significant swelling and he was admitted for observation overnight. The first victim was later found to have suffered broken teeth, fracture of the maxillary alveolar bone and swelling over the right eye with no acute damage to vision. He was hospitalised for two days.[3]

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1 GD at paras 6–8, Record of Proceedings ("ROP") p 162.

2 GD at para 10, ROP p 162.

3 GD at para 9, ROP p 162.

7 Following a police report lodged in respect of the incident concerning the first victim, the second victim, Police Staff Sergeant Tan Wei Ming Lionel, and his partner were despatched to the Angsana Home.[4]

8 Upon proceeding to level 4 of the Angsana Home, they saw the appellant asleep in his bed. They woke the appellant up for questioning. The appellant appeared drunk and began to shout and gesture aggressively. Accordingly, he was placed under arrest and escorted to the police patrol car. The appellant was uncooperative and shouted along the way. The appellant informed the second victim that if he were to be handcuffed, he would turn violent and refuse to co-operate with the police. The second victim then called for backup. In response to the second victim's call for backup, the third victim, Police Sergeant (3) Waris Ahmad Bin Salbir Ahmad, and a colleague arrived at the Angsana Home. The appellant was then handcuffed. However, he continued to resist and shout at the police officers.[5]

9 The appellant was escorted to the police patrol car. Inside the car he was seated in the middle rear seat, where he continued his aggressive behaviour. The second victim was the driver at the material time. When the second victim proceeded to drive off, the appellant used his left leg to kick the second victim on the back of his head. The second victim immediately felt pain on the rear left side of his head, as well as pain and soreness on his left shoulder.[6]

10 When they arrived at the Woodlands Division Regional Lock-Up on 14 November 2019 at about 12.10am, the appellant remained aggressive and

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4 GD at para 11, ROP p 163.

5 GD at paras 12–13, ROP p 163.

6 GD at para 14, ROP p 163.

continued to shout and struggle. He used his right leg to kick the third victim on his left leg, resulting in the third victim feeling pain on his left leg.[7]

11 As a result of the appellant's actions, the second victim was found to have suffered a stable head injury and neck strain. The third victim was found to have suffered a left knee contusion. Both victims were given one day of medical leave.[8]

12 Following from the above, the appellant pleaded guilty on 13 August 2020 to the following charges:

> 1st Charge (DAC-932019-2019)
>
> You… are that charged you, on 13 November 2019, at or about 11.30pm, in Singapore, whilst being escorted back to Woodlands Division in a Police patrol car bearing registration number QX660S, did voluntarily cause hurt to a public servant, namely Police Staff Sergeant Tan Wei Ming Lionel, in the discharge of his duty as such public servant, *to wit*, by using your left leg to kick him on the back of his head, causing him to suffer bodily pain, a stable head injury and a neck strain, and you have thereby committed an offence punishable under Section 332 of the Penal Code (Cap 224, 2008 Rev Ed).
>
> 2nd Charge (DAC-904280-2020)
>
> You… are charged that you, on 14 November 2019, at or about 12.10am, at the Regional Lock Up located at Woodlands Division, Singapore, did voluntarily cause hurt to a public servant, namely Police Sergeant(3) Waris Ahmad Bin Salbir Ahmad, in the discharge of his duty as such public servant, *to wit*, by using your right leg to kick him on his left leg, causing him to suffer bodily pain and a left knee contusion, and you have thereby committed an offence punishable under Section 332 of the Penal Code (Cap 224, 2008 Rev Ed).
>
> 4th Charge (DAC-904281-2020)
>
> You… are charged that you, on 13 November 2019, at or about 9.46pm, outside Room 4022 located at Angsana Home,

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7 GD at para 15, ROP pp 163–164.

8 GD at para 16, ROP p 164.

> 14 Buangkok Green, Singapore, did voluntarily cause grievous hurt to one Musaruddin Bin Yatim, *to wit*, by punching him once on his left cheek, once on his mouth and once on his right eye with your right hand, causing the said Musaruddin Bin Yatim to suffer the following injuries:
>
> (a) swelling over the right eye;
> (b) fracture of the maxillary alveolar bone; and
> (c) broken teeth,
>
> and you have thereby committed an offence punishable under Section 325 of the Penal Code (Cap 224, 2008 Rev Ed).

## Decision below

13 After the appellant was convicted on the above charges, the Prosecution applied to the court to call for a pre-sentencing report to assess the appellant's suitability for PD under s 304(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The appellant did not object to this as the technical requirements set out in s 304(2)(*a*) of the CPC were satisfied. On account of this and in view of the appellant's antecedents, the DJ called for the said pre-sentencing report.

### *The 1st PD report*

14 On 4 September 2020, Mr Cheng Xiang Long ("Mr Cheng"), a lead psychologist with the Singapore Prison Service's ("SPS") Psychological & Correctional Rehabilitation Division issued the 1st PD report, which was vetted by Dr Jasmin Kaur ("Dr Kaur"), a principal psychologist with the SPS.[9]

15 The key findings in the 1st PD report can be summarised as follows:[10]

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9 1st PD report, ROP pp 365–373.

10 1st PD report at p 7, ROP p 372.

(a) The appellant's general risk of reoffending was high. He belonged to a group of prisoners with a 70.2% chance of recidivism within two years of release.

(b) The appellant's risk of violent reoffending was high.

(c) The risk factors for the appellant's violent offending behaviour include his failure to assume responsibility, his alcohol use habit and his habit of non-compliance with his psychiatric medication.

(d) The appellant did not present with any significant protective factors.

***Mr Cheng's written response to the appellant's queries on 1st PD report***

16 On 22 September 2020, the appellant filed written submissions expressing "serious doubt over the accuracy and reliability of the Pre-Sentencing Report and the conclusions it reached". In particular, the appellant alleged that the 1st PD report contained "many inaccuracies and misstatements and misinterpretations of responses given by [the appellant]".[11]

17 The appellant took issue with, *inter alia*, the following findings in the 1st PD report:

(a) First, that the appellant had failed to assume responsibility for his conduct on the basis that he was not forthcoming during the interview and it was difficult to elicit details of his violence history or his motivation behind his use of violence.[12] In this regard, the appellant

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11 Appellant's submissions on the 1st PD report at para 3, ROP p 447.

12 Appellant's submissions on the 1st PD report at para 7, ROP p 448.

submitted that he did not at any time absolve or distance himself from assuming responsibility for his actions. Instead, he had informed Mr Cheng that whilst he was unable to recall the details of the incident due to his intoxication, he knew that what he did was wrong and that he deserved to be punished.[13]

(b) Second, that the appellant had been unable to recall the details of his past offences. The appellant contended that the interview with Mr Cheng prior to the preparation of the 1st PD report was between 30 to 45 minutes and no specific questions were asked about his past offending.[14]

(c) Third, that the appellant had consumed beer on a daily basis and would regularly consume up to six cans of beer. This, the appellant argued was plainly inaccurate as he was residing at the Angsana Home at the material time of the offences and was not at liberty to leave every day and purchase and consume alcohol on such a frequent basis.[15]

(d) Fourth, that the appellant had displayed an intention to stop consuming his psychiatric medication in the future. The appellant disputed this and claimed that he had just expressed his preference for an alternative means of administration of his medication (*ie*, by injection as opposed to oral ingestion).[16]

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13 Appellant's submissions on the 1st PD report at para 8, ROP p 448.

14 Appellant's submissions on the 1st PD report at para 10, ROP p 448.

15 Appellant's submissions on the 1st PD report at para 11, ROP p 448

16 Appellant's submissions on the 1st PD report at para 12, ROP p 449.

18 The appellant thus urged the court to:[17]

(a) call Mr Cheng and Dr Kaur to give evidence in the proceedings touching on, *inter alia*, the preparation of the 1st PD report, the conduct of the interview, the analysis of the response given by the appellant and the findings reached in their report ("the First Application"); and

(b) request Mr Cheng and Dr Kaur to produce all relevant documents prepared or used in the interview and preparation of the 1st PD report ("the Second Application").

19 On 5 October 2020, in a letter to the court, the Prosecution submitted that consideration of the First Application should be deferred until the psychologists had first been given an opportunity to reply in writing. The Prosecution objected to the Second Application on the basis that the appellant had not proffered any reason as to why disclosure of the requested documents was necessary.[18]

20 On 13 October 2020, after hearing the parties, the DJ directed for the psychologists to provide their written response to the appellant's objections to the 1st PD report and determined that the Second Application was unnecessary at that stage.[19]

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17 Appellant's submissions on the 1st PD report at para 14, ROP p 449.

18 Prosecution's letter to court dated 5 October 2020 at paras 4–6, ROP p 354.

19 GD at para 20, ROP p 169; Notes of Evidence ("NE") 13 October 2020 p 4 at ln 3–8, ROP p 35.

21 On 3 November 2020, in compliance with the DJ's direction, Mr Cheng issued his written response ("Written Response").[20] Mr Cheng clarified the following:

(a) The conclusion that the appellant failed to assume responsibility for his conduct was based on several points of information and *not* on the appellant's level of disclosure (*ie*, how forthcoming the appellant was during the interview). While the appellant had acknowledged that his actions were wrong, he did not explicitly acknowledge his or assume responsibility over his actions that preceded his offences (*ie*, his decision to stop taking medication without consultation and consumption of alcohol to the point of intoxication).[21]

(b) The appellant was specifically asked about the details of his past offences, especially his violent offences against public servants. He was also asked about his robbery offence, to which he replied, "I have never robbed anyone".[22]

(c) There was sufficient evidence as indicated by the appellant's responses during the interview that he was intoxicated on the day of the offence to conclude that his alcohol use habit was linked to his offending behaviour and presented as a risk factor regardless of the amount or frequency of his alcohol use.[23]

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20 Mr Cheng's written response dated 3 November 2020 ("Mr Cheng's written response"), ROP pp 374–375.

21 Mr Cheng's written response at para 2, ROP p 374.

22 Mr Cheng's written response at para 4, ROP p 374.

23 Mr Cheng's written response at para 5, ROP pp 374–375.

(d) The appellant had shared that he had stopped consuming his psychiatric medication three weeks prior to his current offences due to the side effects of the medication. In addition, he had also shared that his self-cessation of medication occurred prior to his previous convictions in 2016 and 2017. Mr Cheng acknowledged that the appellant had shared that he intended to request for a switch to having injected medication in the future as the side effects were less severe than orally ingested medication for him. Mr Cheng opined that if the appellant complied with this form of administration of his medication in the future, it could mitigate his risk of reoffending.[24]

(e) The finding that the appellant was at a high risk of violent reoffending was based on: (i) his prior history and density of offences against public servants, (ii) his continued alcohol use habit despite his insight that his alcohol use had led to his past offences, (iii) his non-compliance with medication, and (iv) his failure to assume responsibility over his actions for "his offences and those preceding his offences".[25]

22 On 10 November 2020, after hearing the parties, the DJ was inclined to agree with the Prosecution that the appellant had failed to raise any substantial dispute of fact. Nonetheless, out of an abundance of caution, she granted the First Application to call Mr Cheng to take the stand in order to allow parties to pose clarificatory questions.[26]

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24 Mr Cheng's written response at para 6, ROP p 375.

25 Mr Cheng's written response at para 7, ROP p 375.

26 NE 10 November 2020 p 17 at ln 4–25, ROP p 59.

***Mr Cheng's evidence in court***

23 On 15 January 2021, Mr Cheng took the stand. He maintained his conclusions in the 1st PD report and his clarifications in the Written Response.[27]

24 I highlight only some of the salient points raised in Mr Cheng's testimony:

(a) In assessing an offender's risk of recidivism, an offender's history and frequency of reoffending were relevant factors.[28] He would consider the offender's date of conviction, the duration of the sentence, the actual date of release and the date of the next conviction, to ascertain the period of time the offender remained in the community between each conviction.[29] He acknowledged that looking at the appellant's most recent convictions, he had spent more time in the community between each conviction before reoffending. Indeed, he had taken this into account when preparing the 1st PD report.[30]

(b) His assessment that the appellant was not forthcoming during his interview was based on the differences between the appellant's responses during the interview, the content of the Institute of Mental Health report dated 25 November 2019 ("IMH report")[31] and also

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27 GD at para 22, ROP p 171.

28 NE 15 January 2021 p 7 at ln 10–22, ROP p 75.

29 NE 15 January 2021 p 10 at ln 8–12, ROP p 78.

30 NE 15 January 2021 p 14 at ln 17–20, ROP p 82.

31 IMH report dated 25 November 2019 ("IMH report"), ROP pp 207–213.

Mr Cheng's own observations of the appellant's behaviour during the interview.[32]

(c) His conclusion that the appellant had failed to assume responsibility over his actions was premised on the fact that although the appellant had known that his alcohol use and cessation of medication was linked to his past offending behaviour, he had nonetheless continued to consume alcohol and not comply his medication without consultation. Moreover, the appellant had chosen to place the blame for his offending on the *effects* of his alcohol use and cessation of medication rather than to accept that the present offences were his fault in so far as it was *his decision* to consume alcohol and not comply with his psychiatric medication.[33]

(d) He accepted that there might have been a miscommunication during the interview with the appellant concerning the appellant's alcohol consumption habits. In particular, the appellant may have misunderstood his question about how much the appellant drank daily as referring to how much he *used to* drink daily. This would explain the appellant's response that he would consume alcohol daily and could drink up to six cans of beer, despite clearly not having been able to do so at the material time as he was a resident in the Angsana Home.[34]

(e) He noted that while the appellant had articulated the *belief* that switching the mode of administration of his psychiatric medication from

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32 NE 15 January 2021 p 18 at ln 19–23, ROP p 86 and p 19 at ln 21–25, ROP p 87; GD at para 22, ROP p 171.

33 NE 15 January 2021 p 21 at ln 29 to p 22 at ln 10, ROP pp 89–90, p 24 at ln 1–10, ROP p 92 and p 42 at ln 3–21, ROP p 110.

34 NE 15 January 2021 p 28 at ln 5–16, ROP p 96.

oral ingestion to injection would lessen his side effects, Mr Cheng was not aware that the appellant had actually switched the manner of administration of his medication in the past.[35]

(f) The appellant had indicated that he was interested in participating in a programme run by the National Addictions Management System ("NAMS") to seek help for his alcohol use. However, Mr Cheng observed that the appellant had never once sought help from NAMS in the past and in his assessment, he could not be certain that the programme would contribute to the appellant ceasing his alcohol use.[36]

(g) The appellant had not articulated concrete plans on how he proposed to deal with high-risk situations and triggers upon his unsupervised return to the community.[37]

(h) Despite the appellant's decrease in his frequency of consumption of alcohol, he had not been able to desist from offending for even a period of two years. He had also not demonstrated an ability to stop his alcohol use or to comply with his psychiatric medication. Therefore, he maintained his assessment that the appellant's probability of recidivism remained at 70.2%.[38]

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35 NE 15 January 2021 p 29 at ln 18–31, ROP p 97.

36 NE 15 January 2021 p 33 at ln 3–28, ROP p 101.

37 NE 15 January 2021 p 34 at ln 7–14, ROP p 102.

38 NE 15 January 2021 p 35 at ln 9–23, ROP p 103.

***The appellant's evidence in court***

25 During the hearing on 15 January 2021, the appellant also made an application to give evidence himself which was granted by the DJ.

26 The appellant raised the following points in his testimony:

(a) He was only allowed to leave the Angsana Home once or twice a month, and since he started residing there he only drank alcohol once or twice a month.[39]

(b) When asked by the Prosecution whether he was able to recall why he had committed the present offences, the appellant replied that he did not "remember exactly but the person [*ie*, the first victim] at the home would keep disturbing [him]. He would wear slippers into the prayer area, that is why". The appellant further stated that he had only "hit [the first victim] lightly but he's old and maybe that is why his jaw was fractured".[40]

***The 2nd PD report***

27 Before the appellant could be sentenced, a medical report dated 21 July 2021 from Changi General Hospital ("the Medical Report") was tendered by Defence counsel. The Medical Report indicated that the appellant had been admitted to the hospital from 29 January 2021 to 2 February 2021 because of an incidental finding of a large mass present in the upper pole of his right kidney, following an ultrasound for an unrelated hepatitis C condition. On 10 March 2021, the appellant underwent surgery (laparoscopic right radical nephrectomy)

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39 NE 15 January 2021 p 52 at ln 2–4, ROP p 120 and p 56 at ln 8–10, ROP p 124.

40 NE 15 January 2021 p 52 at ln 12–20, ROP p 122.

at his election. A review was conducted on 12 April 2021 and the appellant was found to be functionally well. It was explained to him that he had stage 3 right kidney cancer which was *completely removed*. In general, it was noted that the 5-year survival rate at this stage of the disease ranged from 60% to 70% and he would require close clinical and radiological surveillance.[41]

28 Following this development, the Prosecution requested that the appellant be reassessed for his suitability for PD. The DJ granted this. A second pre-sentencing report dated 13 September 2021 was subsequently tendered to the court ("the 2nd PD report").[42]

29 In the 2nd PD report, the appellant was still found to be suitable for the PD regime. He was assessed to be in generally good physical condition in spite of his underlying medical conditions. Mr Cheng interviewed the appellant again in preparation for the 2nd PD report and maintained his initial assessment that the appellant's general risk of reoffending was high, his risk for violence reoffending was also high and he remained in the group of prisoners with a 70.2% probability of recidivism within two years of release.[43]

30 As observed by the DJ in her GD, compared to the 1st PD report, Mr Cheng assessed the appellant to be "relatively forthcoming" and largely able to share details for most of his past offending behaviours. He further noted that the appellant had recently reconnected with his mother and siblings, with whom he had lost contact since 2004. His elder sister had expressed her desire for the

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41 Medical Report from Changi General Hospital dated 21 July 2021, ROP pp 529–530.

42 2nd PD report, ROP pp 376–385.

43 2nd PD report at pp 8–9, ROP pp 383–384.

appellant to stay with her in the future so that she could support his reintegration.[44]

31 Mr Cheng also noted that the appellant by then appeared to take responsibility for his offences by attributing his violence to his level of intoxication and his non-compliance with his psychiatric medication. But he opined that this insight had not translated to concrete actions in the past on the appellant's part to avoid alcohol use and comply with his medication.[45] Moreover, Mr Cheng observed that the appellant had continued to present with a pattern of justification regarding his violent offences. He had denied being a violent individual and shared that most of his actions were retaliation in response to perceived threats or provocations. The appellant had also presented with some minimisation of his past violent offences.[46]

32 Unlike in the 1st PD report, Mr Cheng noted that there were some protective factors present. First, the appellant had expressed a motivation to stop his alcohol use and offending behaviour following his recent medical issues, in particular his right kidney cancer. He had also expressed a willingness to seek assistance from NAMS to address his alcohol use and comply with his psychiatric medication. Second, the presence of familial social support could mitigate his risk of violent reoffending.[47]

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44 GD at para 30, ROP p 174.

45 2nd PD report at p 7, ROP p 382; GD at para 31, ROP p 174.

46 2nd PD report at p 7, ROP p 382.

47 2nd PD report at pp 8–9, ROP pp 383–384; GD at para 32, ROP pp 174–175.

***Decision to impose PD***

33 First, the DJ was satisfied that the grounds which Mr Cheng had relied on to anchor his findings in the PD reports were sound and credible and were not weakened in any way by the peripheral objections that the appellant had taken to certain aspects of the reports.[48] In particular, the DJ agreed with Mr Cheng that:

(a) The appellant had an alcohol use problem, and this was a risk factor contributing towards his commission of the offences. How much alcohol the appellant consumed during the material period and the frequency of such consumption was beside the point.[49]

(b) The appellant had failed to assume responsibility over his actions. He sought to claim that the fault lay in his state of intoxication and his state after not consuming his medication. He did not accept that the present offences were his fault in so far as it was his *own decision* to consume alcohol and to stop taking his medication.[50] This was buttressed by the appellant's seeming pledge to conditionally comply with his psychiatric medication if it were to be administered by injection, as well as his attempted justification and downplaying of his actions against the first victim in his testimony in court.[51]

34 Second, the appellant's criminal history spoke for itself. From 1985 to the present, the appellant had not been able to stay crime free in the community

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48 GD at para 58, ROP p 185.

49 GD at para 55, ROP pp 182–183.

50 GD at para 56, ROP pp 183–184.

51 GD at para 57, ROP pp 184–185.

for any significant period of time. Further, his antecedents reflected a pattern of violent behaviour and a blatant disregard for authority.[52] Notwithstanding that in recent years the appellant managed to stay crime free for a longer period of time, possibly as he had been staying at the Angsana Home with less access to alcohol; the appellant still failed to stay away from offending for even a period of two years. The appellant also committed numerous offences within the Angsana Home in 2016 and 2017, thus indicating that residing in the Angsana Home itself was insufficient to prevent him from reoffending.[53]

35 Third, there were no significant protective factors. Although the appellant had indicated that he intended to go through with a programme run by NAMS to deal with his alcohol problem, nothing concrete was put forward. Neither was there anything concrete put forward in respect of the appellant's purported intention to request for a switch to having injected medication in the future. In addition, although the appellant had reconnected with his family between the issuance of the 1st and 2nd PD reports, the DJ found that the assurance of familial support was too vague and insubstantial to be relied upon. The appellant had not been in contact with his family for the last 15 to 16 years and it was simply not realistic to believe that a close and trusted relationship with his elder sister could be formed immediately upon his release such as to enable her to be in a position to adequately control and guide him in his efforts at rehabilitation and reintegration.[54]

36 Fourth, the nature of the present offences committed by the appellant were serious involving the use of violence. The attack on the first victim was

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52 GD at para 60, ROP p 185.

53 GD at paras 61–62, ROP pp 185–186.

54 GD at paras 64–65 and 68, ROP pp 186–187.

unprovoked and resulted in serious injuries. The attack on the second and third victims who were law enforcement officers discharging their duties also could not be condoned. Importantly, these were not the appellant's first violent offences, and he had a history of aggression towards public servants.[55]

37 Fifth, the appellant's medical condition was not a significant mitigating factor. The appellant appeared to be functionally well and there was no real doubt that the SPS would be in a position to manage his health and medical needs.[56]

38 Lastly, a ten-year term of PD was necessary for the protection of the public. He had previously been sentenced to PD of the same duration, and this remained appropriate as the appellant's general risk of recidivism was high and his risk of violent reoffending was also high. Moreover, there were no significant protective factors to justify a reduced term being given.[57]

## The appeal

### *The parties' positions*

39 The appellant submits that the DJ erred in imposing a sentence of PD. The appellant argues that:

(a) the DJ erred in finding that the contents of both the 1st and 2nd PD reports and the evidence of Mr Cheng in court were sound;[58]

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55 GD at paras 71–72, ROP p 188.

56 GD at para 74, ROP pp 188–189.

57 GD at para 76, ROP pp 189–190.

58 Appellant's submissions ("AS") at paras 18–54.

(b) the DJ erred in failing to consider the appellant's prior convictions and the reduction in his recidivism rate in totality;[59]

(c) the DJ erred in finding that there were no significant protective factors;[60]

(d) there were special reasons the appellant should not be sentenced to PD, in particular his "debilitating medical conditions and his deteriorating health";[61] and

(e) in the alternative to (d), the appellant's medical conditions were sufficiently serious to amount to a mitigating factor.[62]

40 Accordingly, the appellant submits that a sentence of three years' and one month's imprisonment would be more appropriate.

41 The Prosecution conversely submits, *inter alia*, that the DJ was plainly correct in sentencing the appellant to a term of ten years' PD as:[63]

(a) the DJ was right to rely on the conclusions reached in the 1st and 2nd PD reports as they were sound;

(b) the DJ carefully weighed the risk factors against the protective factors in arriving at the sentence imposed;

(c) the appellant's offending history viewed in totality amply justified the sentence imposed;

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59 AS at paras 55–60.

60 AS at paras 61–71.

61 AS at paras 74–77.

62 AS at paras 82–92.

63 Prosecution's submissions ("PS") at para 32.

(d) the DJ was correct in concluding that the appellant's medical condition was not a mitigating factor; and

(e) PD for a duration of at least ten years was necessary in the interests of the protection of the public.

***The SPS Clarificatory Report***

42 After hearing the parties' submissions, I directed that the parties tender further submissions on certain factual issues, namely: (a) whether there were any rehabilitation programmes available to the appellant in prison for him to address his alcohol use problem and if so, whether the appellant took effort to seek out such programmes; and (b) how the appellant's psychiatric medication was being administered in prison and whether the appellant had requested his medication to be administered by way of injection.

43 The Prosecution tendered a clarificatory report by the SPS dated 9 June 2022 ("the SPS Clarificatory Report"). The SPS Clarificatory Report stated as follows:

> (a) The appellant was offered three rehabilitation programmes following his admission to prison, namely the Motivational Programme, the Family Programme and the Psychology-based Correctional Programme. Importantly, the last programme was meant to target multiple areas of need including general attitudes supportive of crime as well as substance and alcohol abuse.[64] The appellant initially refused to attend any of the three programmes when they were offered to him.

64 SPS Clarificatory Report at para 3.

However, on 7 June 2022, he indicated that he was agreeable to attend these programmes.[65]

(b) The appellant had asked the prison psychiatrist on 9 May 2022 for a depot injection. However, this was denied as he had no psychotic disorder diagnosis. Thus, he is currently prescribed with oral medications only.[66]

## My decision

44 At the outset, I note that it is not disputed that the technical requirements under s 304(2)(*a*) of the CPC for the imposition of a sentence of PD are satisfied. Therefore, the ultimate issue for determination is whether the DJ was correct in finding that it was expedient for the protection of the public for a sentence of PD to be imposed on the appellant.

### *The law on preventive detention*

45 The overarching consideration applicable to PD was reiterated by Sundaresh Menon CJ in *Re Salwant Singh s/o Amer Singh* [2019] 5 SLR 1037 at [52]:

> It is well established that the foundation of the sentence of preventive detention is the *need to protect the public*. This is clear from the wording of s 304(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) itself … which states that the court shall sentence the accused to preventive detention if the court is satisfied that "it is expedient for the protection of the public". [emphasis added]

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65 SPS Clarificatory Report at para 4.

66 SPS Clarificatory Report at para 5.

46 Similarly, the Court of Appeal in *Public Prosecutor v Rosli bin Yassin* [2013] 2 SLR 831 at [11] observed that:

> The overarching principle is the need *to protect the public* … Put simply, if the individual offender is such a habitual offender whose situation does not admit of the possibility of his or her reform, thus constituting a menace to the public (and this would include, but is not limited to, offences involving violence), a sentence of preventive detention would be imposed on him or her for a substantial period of time in order to protect the public. As Yong Pung How CJ put it in the Singapore High Court decision of *PP v Wong Wing Hung* [1999] 3 SLR(R) 304 ("*Wong Wing Hung*") at [10], the "sentence [of preventive detention] is meant essentially for *habitual* offenders, who must be over the age of 30 years, whom the court considers to be *beyond redemption and too recalcitrant for reformation*". The court will look at the *totality* of the offender's previous convictions. (see the Singapore High Court decision of *Tan Ngin Hai v PP* [2001] 2 SLR(R) 152 at [7]). [emphasis in original]

47 To summarise, if an individual offender is such a habitual offender whose situation does not admit of the possibility of his reform, thus constituting a menace to the public, a sentence of PD would appropriately be imposed on him for a substantial period of time in order to protect the public. In its assessment, the court will have regard to the totality of the offender's previous convictions viewed together with the circumstances of the offender's present offending.

48 Importantly, since a sentence of PD is underpinned by the need to protect the public, it differs from a sentence of imprisonment and different considerations may apply in determining the appropriate duration and implementation of the sentence. As Yong CJ explained in *Public Prosecutor v Perumal s/o Suppiah* [2000] 2 SLR(R) 145 at [38]:

> In this regard, I must reiterate my earlier exhortation in *PP v Wong Wing Hung* … at [10] not to confuse the concept of preventive detention and imprisonment, which are distinct

> sentences and are underpinned by different objectives and rationales. The former is essentially aimed at the protection of the public while the latter reflects the traditional policies of prevention, deterrence, rehabilitation and retribution. They are different in duration, character and implementation. As such, it would be a mistake to view them as fungible sentences.

49 With the above sentencing considerations in mind, the question is whether the DJ correctly found that it was expedient for the protection of the public to sentence the appellant to a term of PD.

***Analysis of findings in the 1st and 2nd PD reports***

50 I first consider whether the DJ was correct to find that the grounds which Mr Cheng relied on to anchor his findings in the two PD reports were sound and credible, and therefore capable of reliance.

51 Before I begin my analysis, it is important to bear in mind that the ultimate question of whether it is expedient for the protection of the public that an offender should be sentenced to PD remains a question solely for the court's determination. While the preparation of the PD reports is a necessary statutory requirement (under s 304(3) of the CPC) to apprise the court of an offender's physical and mental condition and suitability for PD, as the DJ rightly acknowledged,[67] these reports are not conclusive of the question. It remains for the court to make its own holistic assessment of all relevant facts.

52 I now return to the analysis of the findings in the PD reports. In my view, the DJ was entirely justified in arriving at her conclusion that the findings in the two PD reports were sound and reliable. Accordingly, her decision to rely on their contents and the conclusions therein that the appellant "belong[ed] to a

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67 GD at para 59, ROP p 185.

group of prisoners with a 70.2% probability of recidivism within 2 years of release" with a high general risk of reoffending and high risk for violent reoffending was unimpeachable.

53 The risk factors identified by Mr Cheng in both the PD reports included the appellant's: (a) failure to assume responsibility and/or minimisation and justification of his violent offending; (b) alcohol use; and (c) non-compliance with his psychiatric medication. Although the appellant only takes issue with the first risk factor identified (*ie*, his failure to assume responsibility), I will address all three risk factors for completeness.

*The appellant's failure to assume responsibility for and/or minimisation and justification of his violent offending*

54 The appellant argues that the DJ was wrong to accept Mr Cheng's findings in the PD reports that he failed to assume responsibility for his actions. He claims that Mr Cheng had erroneously reached this conclusion having wrongly assessed him to have not been forthcoming during the interview leading up to the preparation of the 1st PD report.[68] To support his claim, the appellant quotes the following portion of Mr Cheng's testimony in court:[69]

> A Um, the point about him not assuming responsibility was about, um, how he described his current offences, uh, and his past offences which included, um, things--- certain things like he would suddenly do in his cases, uh, his mind would trip or go blank, uh, and he doesn't know why he gets into trouble. Um, and then he would talk about his alcohol use and he stopped on medication and suggest that those were the reasons why he committed the offences.

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68 AS at para 27(a).

69 AS at [29].

55 However, this must be read in light of Mr Cheng's further clarifications in his exchange with the Prosecution:[70]

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|---|---|
| Prosecution | During the interview, did the accused accept that the present offences were his fault insofar as it was his decision to consume alcohol? |
| A | Uh, no. He did not, Your Honour. |
| Prosecution | Did the accused accept that the present offences were his fault insofar as it was his decision not to comply with the psychiatric medication? |
| A | No, he did not, Your Honour. |
| … | |
| Prosecution | Am I right in saying that this was the basis on which you concluded that the accused failed to assume responsibility over his actions? |
| A | Yes, that is correct. *He did not, um, acknowledge his fault in taking alcohol or stopping the consumption of his medication. Even though he was able to articulate is awareness that those 2 circumstances had led to his previous offences in 2016 and 2017.* |

[emphasis added]

56 I make the following observations. First, as was made clear in the course of Mr Cheng's testimony, his finding that the appellant had failed to assume responsibility over his actions was based on the fact that the appellant had refused to accept that the present offences were his fault because of *his own decision* to consume alcohol and to cease taking his psychiatric medication. The appellant had instead sought to distance himself from his offending conduct by suggesting that the reason why he had committed his past offences was because of his *state* of intoxication and his *state* after not consuming his psychiatric medication, without acknowledging that he was responsible for winding up in those states in the first place.

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70 NE 15 January 2021 p 42 at ln 3–21, ROP p 110.

57 Second, contrary to the appellant's assertion, it was made patently clear that Mr Cheng did not rely on how forthcoming the appellant was in arriving at the conclusion (in the 1st PD report) that the appellant had failed to assume responsibility for his actions. In the Written Response, Mr Cheng categorically stated that the conclusion drawn that the appellant failed to assume responsibility for his conduct was *not* based on "the level of disclosure of the [appellant]".[71]

58 In addition, the appellant also argues that he had assumed responsibility by acknowledging that his alcohol abuse and his non-compliance with his psychiatric medication led to the commission of the offences. He pointed out that in the 2nd PD report, Mr Cheng had acknowledged that the appellant was forthcoming and had assumed responsibility over his actions.[72]

59 I accept that in the 2nd PD report, Mr Cheng had observed that the appellant appeared to assume responsibility over his offending conduct. However, I am of the view that little weight should be placed on this. To my mind, the appellant's belated attempts to assume responsibility only when the 2nd PD report was prepared was self-serving and disingenuous.

60 First, as highlighted by the Prosecution, the appellant had the benefit of studying the 1st PD report, the Written Response and hearing Mr Cheng's explanations on how he identified the appellant's particular risk factors during the hearing on 15 January 2020.[73] Pertinently, a large part of Mr Cheng's testimony centred around why he had found that the appellant failed to assume

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71 Mr Cheng's written response at para 2, ROP p 374.

72 AS at para 43.

73 PS at para 42.

responsibility for his actions. Thus, the appellant's sudden volte-face and candidness in assuming responsibility for his conduct must be viewed with a degree of scepticism.

61 Second, and most tellingly of the appellant's true state of mind was his active minimisation and justification of his violent offending. This was plain during his testimony in court as well as from the recorded observations of Mr Cheng in the 2nd PD report:

> (a) When the appellant was asked by the Prosecution why he had committed the present offences, he replied: "I don't remember exactly but the person [*ie*, the first victim] at the home would keep disturbing [him]. He would wear slippers into the prayer area, that is why". The appellant further stated that he had only "hit [the first victim] lightly but he's old and maybe that is why his jaw was fractured".[74] The appellant's natural instinct was to point his finger at the first victim and push the blame for his offending conduct onto him. Instead of taking responsibility for his own unprovoked act of violence, he sought to justify his actions by claiming that the first victim would "keep disturbing" him. He even went a step further to minimise the severity of his offences by saying that he had only hit the first victim "lightly". This could not be further from the truth. As apparent from the Statement of Facts which the appellant admitted to, the appellant had punched the first victim not once, but thrice, aiming at a vulnerable part of his body, his face. The injuries caused to the first victim were severe – he had been found to have suffered broken teeth, a fracture of maxillary alveolar

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74 NE 15 January 2021 p 52 at ln 12–20, ROP p 122.

bone and swelling over his right eye. These injuries were clearly not the result of a "light" hit.

(b) In the 2nd PD report, Mr Cheng recorded that the appellant had "denied being a violent individual and shared that most of his actions were retaliation in response to perceived threats or provocations". Crucially, for his present offence, he shared that "it takes two hands to clap. Surely something must have triggered me". The appellant evidently demonstrates little remorse and insight into his past violent offending. Indeed, his denial of being a violent individual flies in the face of his past convictions for violence-related offences in 1989, 1991, 1994 (where he was sentenced to ten years of PD), 1998, 2001, 2002, 2004, 2016 and 2020 (the present set of offences).

(c) In the 2nd PD report, it was also recorded that he had minimised the violence against his ex-wife (in relation to his past breaches of Personal Protection Orders). The appellant claimed that he would "joke with no expression" and suggested that his ex-wife was unable to take his jokes. He also claimed that he "never punch[ed] her, maybe just 1 to 2 slaps only".

62 It is beyond peradventure that the appellant did not truly assume responsibility for his offending conduct. His empty recognition of this during the interview with Mr Cheng leading up to the preparation of the 2nd PD report was merely lip service. When probed further, it was apparent that he would at every opportunity seek to externalise the blame for his offences onto his unfortunate victims. The appellant's claim that he actively assumed responsibility for his offending conduct thus rings hollow in light of his persistent minimisation and justification of his violent offending.

*The appellant's alcohol use*

63 The appellant does not dispute that his alcohol use as identified in the PD reports is a relevant risk factor, and I am satisfied that this finding is well supported by evidence.

64 In the appellant's IMH report, it was opined that the appellant "had alcohol intoxication at the material time of the offence on the background of an alcohol use disorder".[75]

65 In addition, the appellant had shared during the interviews conducted by Mr Cheng prior to the preparation of the PD reports that:

(a) He started consuming alcohol at the age of 18 years old and had not stopped since then.[76]

(b) In the period leading up to his current arrest, he would consume beer and Chinese wine when he was given off days to go out from the Angsana Home.[77]

(c) He had been intoxicated during most of his past violence-related offences.[78]

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75 IMH report at p 4, para 20(a), ROP p 210.

76 1st PD report at p 6, ROP p 371; 2nd PD report at p 7, ROP p 382.

77 2nd PD report at p 7, ROP p 382.

78 1st PD report at p 6, ROP p 371; 2nd PD report at p 7, ROP p 382.

(d) On the day of committing the present offences, he had bumped into his friend and consumed six cans of beers, which resulted in his intoxication.[79]

66 Further, as observed by Mr Cheng in the 2nd PD report, although the appellant had attributed his violence to his level of intoxication, his insight had not translated to concrete actions in the past to avoid alcohol use.[80] As a resident in the Angsana Home, the appellant was allowed to leave only once or twice a month and he had no access to alcohol while in the home. However, the appellant admitted in court that he would consume alcohol once or twice a month.[81] The logical inference from this is that the appellant would consume alcohol on each occasion he was permitted to leave the Angsana Home, despite being cognisant of the potential violent consequences which might follow.

67 Therefore, I am of the view that the finding in the PD reports that the appellant's alcohol use is a risk factor is well founded and was rightly accepted by the DJ. I note the appellant's submission that this risk factor is no longer significant in view of his willingness to seek help for his alcohol problem through a programme run by NAMS. I will return to deal with this submission at [79]–[80] below.

*The appellant's non-compliance with his psychiatric medication*

68 Similar to his alcohol use, the appellant does not dispute that his non-compliance with his psychiatric medication is a relevant risk factor.

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79 2nd PD report at p 7, ROP p 382.

80 2nd PD report at p 7, ROP p 382.

81 NE 15 January 2021 p 56 at ln 8–13, ROP p 124.

69 The appellant shared with Mr Cheng that he would experience both auditory hallucinations (*ie*, hearing voices) and visual hallucinations (*ie*, seeing scorpions, spiders and other insects). He also shared that his offence in 2017 where he had smashed things at the Angsana Home, occurred as he was hearing voices and seeing spiders. He also revealed that he would sometimes become violent if he experienced auditory or visual hallucinations. But he indicated that these hallucinations would come under control when he consumed his psychiatric medication.[82]

70 Nonetheless, the appellant admitted that he had a pattern of non-compliance with his psychiatric medication without any prior consultation with a psychiatrist. In particular, he reported that he had stopped consuming his medication for around three weeks prior to the present set of offences as he disliked its side effects. He also opined that some of his past offences had resulted from his non-compliance with his medication.[83]

71 Hence, I am of the view that the DJ did not err in accepting the finding in the PD reports that the appellant's non-compliance with his psychiatric medication presented as a risk factor. However, I also note that the appellant submits that this risk factor can be mitigated once he switches the mode of administration of his medication from oral ingestion to injection. I deal with this submission at [81]–[83] below.

***The appellant's offending history***

72 I now turn to examine the totality of the appellant's history of criminal offending.

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82 2nd PD report, pp 7–8, ROP pp 382–383.

83 2nd PD report, p 8, ROP p 383.

73 As noted by both the DJ and the Prosecution, the appellant has an extensive list of prior convictions spanning over 35 years with his first conviction when he was 18 years old and the most recent when he was 54 years old. He had been convicted on 22 prior occasions. In particular, as mentioned above at [61(b)], the appellant had been convicted for violence-related offences in 1989, 1991, 1994, 1998, 2001, 2002, 2004, 2016 and 2020 (in respect of the present offences). The appellant's conviction in 2004 involved offences for robbery and carrying an offensive weapon, and he was ordered to serve a term of ten years' PD. It appears that none of the prior sentences imposed have successfully deterred the appellant from a life of crime. Even the appellant's earlier term of PD had no effect on his propensity to commit violence-related offences.

74 The appellant seeks to argue that the DJ erred in failing to consider the decrease in his recidivism rate and the decrease in the severity of his offending.[84] However, I find that this argument has no merit. It must be remembered that the court must have regard to the *totality* of the offender's previous convictions and not simply limit itself to focusing on a particular period of time in the offender's offending history.

75 To this end, I agree with the DJ's observation that despite the marginal increases in the period of time the appellant has spent in the community between his convictions, he had still failed to stay away from offending for even a period of two years.[85] It is thus clear that the appellant remains engaged in a pattern of reoffending with no indication of ceasing.

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84 AS at paras 55–60.

85 GD at para 62, ROP p 186.

76 It also cannot be ignored that despite the apparent decrease in the severity of the appellant's offending after his term of PD following his conviction in 2004, the severity of the appellant's present offences has once again increased considerably. As the Prosecution observed, while there were periods where the appellant committed offences of decreasing severity, such periods were always followed by spates of serious offending.[86] The present offences were *all* violence-related offences and marked an escalation in the severity of the appellant's offending conduct. The appellant had engaged in wanton and unprovoked violence against three persons – two of whom were police officers in the execution of their duties as public servants. The injuries against the first victim were also serious and the appellant had targeted the victim's face despite the fact that the victim had not retaliated.

***Significance of the protective factors identified***

77 The DJ acknowledged that there were three main protective factors identified in the 2nd PD report: (a) the appellant's indication that he intended to go through a programme run by NAMS to deal with his alcohol problem; (b) the appellant's intention to request for a switch to having injected medication as opposed to oral medication; and (c) the appellant's resumption of contact with his estranged family members, in particular, his elder sister who offered to take care of him following his release.[87] However, she concluded that none of these were significant enough protective factors to adequately mitigate his risk of reoffending.[88] The appellant disagrees with this finding.

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86 PS at para 71(c).

87 GD at paras 64–68, ROP pp 186–187.

88 GD at para 70, ROP p 188.

78 In my view, the DJ did not err in finding that there were no significant protective factors present.

79 First, although the appellant had expressed his intention to seek treatment with NAMS for his alcohol problem, the DJ rightly observed that the appellant had not provided any concrete plans or proposals.[89] This is further confirmed by the SPS Clarificatory Report. As stated above at [43(a)], the appellant was offered three rehabilitation programmes following his admission to prison: (a) the Motivational Programme, (b) the Family Programme and (c) the Psychology-based Correctional Programme. Most relevantly, the Psychology-based Correctional Programme was a programme targeted at "multiple areas of need including general attitudes supportive of crime *as well as substance and alcohol abuse*". If the appellant had genuinely intended to seek help for his alcohol problem, he would have signed up for this programme at the first opportunity. However, the SPS Clarificatory Report indicated otherwise. It stated that the appellant had initially *refused* to attend all three rehabilitation programmes offered to him and had only agreed to attend the programmes on 7 June 2022; this was notably *after* the court had directed parties to answer the questions posed concerning the appellant's efforts at seeking out rehabilitation options in prison. I should add that I am not convinced by the appellant's submission that he was unable to immediately enrol in the rehabilitation programmes "due to certain health conditions" he was experiencing at the time.[90] The SPS Clarificatory Report stated in no uncertain terms that the appellant had *refused* to attend the rehabilitation programmes and made no mention of the fact that he had expressed interest but was *unable* to attend due to his alleged health conditions. It was hardly a coincidence that the

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89 GD at para 64, ROP p 186.

90 Appellant's further submissions dated 5 July 2022 ("AFS") at para 14.

appellant had seemingly recovered from his ailments and agreed to attend all the rehabilitation programmes only after the court's follow-up directions inquiring into his efforts in seeking out and participating in any such programmes.

80 In sum, I am not confident that the appellant's sudden amenability to attending these rehabilitation programmes is an indication of a genuine desire to seek treatment to deal with the root causes of his offending. Indeed, I agree with the Prosecution that the appellant's initial refusal to attend the programmes was more significant in demonstrating the appellant's continued failure to assume responsibility for his conduct and lack of motivation to seek to rehabilitate himself to prevent further reoffending.[91]

81 Second, based on the SPS Clarificatory Report it is clear that the appellant is unable to receive his psychiatric medication via injection. According to the report, an injection can only be administered if the appellant has a psychotic disorder diagnosis, which he does not.[92] Further, I share the DJ's concern that the appellant appeared to make switching the mode of administration of his medication as a *condition* which had to be met before he would duly comply with his medication. In my judgment, to the appellant, reducing the side effects of his medication clearly took precedence over ensuring that he did not continue to reoffend and harm those around him. Left only with the option of orally ingested medication, the appellant's history of non-compliance inspires little confidence in any future regular compliance.

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91 Prosecution's further submissions dated 5 July 2022 at para 8.

92 SPS Clarificatory Report at para 5.

82 I am aware that the appellant has raised in his further submissions following the issue of the SPS Clarificatory Report that his condition has improved since the increase in dosage of his medication and the prescription of further oral medication to deal with the side effects.[93] This additional evidence does not relate in any way to the questions posed to the parties and addressed in the SPS Clarificatory Report and I accordingly place no weight on this.

83 Moreover, for the sake of argument, even if the appellant had been permitted to switch the mode of administration of his medication, I agree with the DJ that there was simply no assurance that he would really comply with taking them.[94] In any event, it is unclear whether switching the mode of administration of his medication would have the desired effect of reducing his side effects. As Mr Cheng testified, the appellant had only expressed his *belief* that this would be so, and it was uncertain if he had ever made the switch to injected medication before (see [24(e)] above). But what is certain is that the appellant has demonstrated a pattern of deliberate non-compliance with his psychiatric medication with the knowledge that doing so could very likely result in violent consequences.

84 Third, while it is certainly fortunate that the appellant has managed to reconnect with his estranged family, the benefits of this must be tempered with reality. As the DJ cautiously observed, the appellant had been estranged from his family for a lengthy period spanning about 15 to 16 years. It is thus difficult to accept that his elder sister would be in a position to adequately control and guide him in his efforts at rehabilitation and reintegration.[95] Moreover, no

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93 AFS at para 22.

94 GD at para 65, ROP p 186.

95 GD at para 68, ROP p 187.

details of how any care arrangements would be formulated were provided to the court. This would have gone some way in showing the level of oversight of and commitment to the appellant's rehabilitation and reintegration.

***The appellant's medical condition***

85 I now address the relevance of the appellant's medical condition. Although the appellant concedes that his medical condition is not sufficiently serious to meet the high threshold for the exercise of judicial mercy, his submissions in the alternative are that: (a) his medical condition renders him physically unsuitable for PD; or (b) his medical condition should be regarded as a mitigating factor.

86 The appellant's first submission can be disposed of shortly. The Medical Memorandum dated 24 August 2021 prepared by Dr Lee Guo Rui ("Dr Lee") annexed to the 2nd PD Report, found that the appellant was of "generally good physical condition" and that he was "suitable" for the PD regime.[96] The appellant has not provided any reason to cast doubt on Dr Lee's assessment.

87 In relation to the appellant's second submission, I am of the view that the appellant's medical condition is not a mitigating factor. In this regard, the observations of the three-judge coram of the High Court in *Chew Soo Chun v Public Prosecutor* [2016] 2 SLR 78 ("*Chew Soo Chun*") at [38] are instructive:

> In summary, ill health is relevant to sentencing in two ways. First, it is a ground for the exercise of judicial mercy… Secondly, it exists as a mitigating factor. The cases where ill health will be regarded as a mitigating factor include those which do not fall within the realm of the exceptional but involve markedly disproportionate impact of an imprisonment term on an offender by reason of his ill health. The court takes into account

96 2nd PD report, ROP p 377.

> the fact that ill health may render an imprisonment term that will not otherwise be crushing to one offender but may be so to another, and attenuates the sentence accordingly for the latter offender so that it will not be disproportionate to his culpability and physical condition.

88 It is clear from *Chew Soo Chun* that whether the appellant's medical condition ought to be accorded mitigating weight depends on whether he would face far greater suffering than the usual hardship in serving a term of imprisonment. Such suffering is generally constituted by a risk of significant deterioration in health or a significant exacerbation of pain and suffering. In the present case, the Medical Report indicates that he had stage three right kidney cancer which was "completely removed". Further, as noted above, the Medical Memorandum annexed to the 2nd PD report found the appellant to be of "generally good physical condition" and that he was "suitable" for the PD regime.[97]

89 Although the Medical Report indicated that the five-year survival rate at this stage of the disease ranged from 60% to 70%, I agree with the Prosecution that this risk remains regardless of whether the appellant is within or outside prison.[98] Thus, a sentence of PD would not make a difference to the appellant's state of health or the suffering he would face in prison. Moreover, I would go further to say that the appellant is likely to receive more timely medical intervention whilst in prison seeing as his cancer was first detected in remand and thereafter adequately and expeditiously treated.

90 Further, although the appellant argues that a term of PD would be tantamount to a life sentence after consideration of the five-year survival rate

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97 ROP p 377.

98 PS at para 80.

stated above, I find that there is insufficient evidence to suggest that the appellant would fall outside of the 60 to 70% survival range. In fact, all the medical evidence at this point suggests that he is in a good physical condition.

***Duration of the term of PD***

91 In relation to the duration of the term of the PD, the DJ found that there was no reason to depart from the length of his previous term of ten years' PD. I agree. There are no significant protective factors in the appellant's favour such as those in *Public Prosecutor v Tang Hian Leng* [2018] SGDC 180 where the offender had engaged in legal employment, did not resume his illegal drugs consumption habits, stayed away from his anti-social peers, found a partner who engaged in pro-social conventional activities and embraced change through religion, *etc*., which warranted a decrease in the duration of his term of PD.

92 Ultimately, the duration of the term of PD is guided by the extent to which the public requires protection from the appellant. The appellant has demonstrated that he has yet to genuinely assume responsibility for his conduct as he continually minimises and seeks to justify his violent behaviour. He has not shown a committed effort to address the root cause of his offending, which are mainly his alcohol use and non-compliance with his psychiatric medication. His marked escalation in the severity of his offending as reflected in the present set of violent offences renders it expedient that he be detained for a sufficiently long period of time for the protection of the public.

**Conclusion**

93 Having regard to all of the above, the sentence of ten years' PD cannot be said to be manifestly excessive. I therefore dismiss the appeal.

Vincent Hoong
Judge of the High Court

Mato Kotwani (PDLegal LLC) and Ashwin Ganapathy (I.R.B Law LLP) for the appellant;
Niranjan Ranjakunalan (Attorney-General's Chambers) for the respondent.