

4IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 22

Youth Court Appeal No 4 of 2022/01

Between

WLK

... Appellant

And

Public Prosecutor

... Respondent

FOUNDATIONS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Young offenders]

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WLK
v
Public Prosecutor

[2023] SGHCF 22

General Division of the High Court (Family Division) — Youth Court Appeal
No 4 of 2022/01

Choo Han Teck J

23 March, 13 April 2023

20 April 2023.

Choo Han Teck J:

1 The appellant was 14 years old when he pleaded guilty to a charge under s 3(1)(b) of the Protection from Harassment Act 2014 (2020 Rev Ed) on 31 October 2022. He was also 14 when he committed the offence on 26 August 2022. He was charged for causing alarm to his mother by posting a photograph, on his WhatsApp chat profile, of a homemade spear, comprising a kitchen knife tied to a bamboo pole. In addition to the photograph, he ran a caption that read “come knocking on my door cunt”.

2 He was sent for psychiatric assessment at the Institute of Mental Health and was diagnosed with Social Communication Disorder and Adjustment Disorder, but was otherwise of sound mind and was fit to plead. The Court ordered a probation report. In that report, the probation officer recommended

that the appellant be placed in a Juvenile Rehabilitation Centre for 24 months because probation was, in his opinion, not suitable for the appellant.

3 The learned judge of the Youth Court ordered the appellant to serve six months in the Juvenile Rehabilitation Centre. The appellant appeals against this order. He wishes to be placed on probation instead.

4 The learned prosecutor supported the probation officer's recommendation of 24 months in the Juvenile Rehabilitation Centre, but the learned judge thought that six months was sufficient. I agree with the learned judge below that, "[a]lthough the offence caused alarm, it was not especially serious". He reminded parties that had the appellant been an adult, the maximum sentence would have been imprisonment for six months and a fine of \$5,000 for the offence for which the appellant was charged.

5 It is also an important fact that the harm that formed the subject matter of the charge was the alarm it caused to the appellant's mother. No physical harm was caused, and the alarm was not at the level where someone was made to fear imminent physical harm — the appellant's mother only came to know of the offending act through his school teacher, who was herself informed by the appellant's classmates. The appellant was turned in by his mother who feared that he might go "berserk" and, if so, she might not be able to cope because her husband, the appellant's father, is bed-ridden. Above all else, we must not forget that he was a 14-year-old when he posted the offending picture. One can imagine the behaviour of some others of the same age to be worse.

6 However, beneath the straightforward facts giving rise to the charge of causing alarm to his mother, it was reported that the appellant had a history of minor violence such as throwing his mobile phone out of his classroom window,

and a can of beverage at his mother. The learned judge found that the appellant had few friends in school and is known to defy his teachers. In the tally of his prior behaviour, his attendance at school in 2021 and the first half of 2022 had been regular and ought to be taken into account as the learned judge did.

7 The questions before me are whether the appellant should be granted probation or be detained in the Juvenile Rehabilitation Centre, and if the answer is the latter, what would be the appropriate length of the detention?

8 The Judge below also took into account the signs of remorse and rehabilitation during the period in which he was monitored for the purposes of the probation report on him. He was of the view that “even if the structured environment of the Juvenile Rehabilitation Centre is necessary ... there is no need for his stint to be a long one”.

9 The problem is this — how do we determine what constitutes a “long” period of detention, and conversely, what constitutes a “short” one? Of course, in itself, 24 months seems long. The appellant would have entered as a youth and emerge as a young man, straight in for his national service. But does that mean that six months should be considered as short? I do not think so. On the contrary, one might take the view that in the light of the appellant’s pattern of unruly behaviour, six months would be inadequate for his rehabilitation. That seems to me to be the difficulty the learned judge faced.

10 The answer, as in all matters relating to the administration or application of the Children and Young Persons Act 1993 (2020 Rev Ed) (“CYPA”), must lie in the welfare and best interests of the child or young person — which is the paramount consideration: see s 4(b) of the CYPA. In this case, what is in the appellant’s best interest would depend on his prospects of rehabilitation under

the different sentencing options. That would, in turn, depend on the full circumstances of his case, including his conduct while on bail pending the hearing of his appeal. This is solely for the purposes of determining whether there are any factors that militate against probation, for in normal criminal cases, the conduct of the offender after his conviction is of little value.

11 I agree with the learned judge below that the appellant is a first-time offender and no physical harm had been caused, bearing in mind that the actual offence was posting a picture (as opposed to a direct threat to the appellant's mother) of a home-made spear accompanied by a rude, perhaps vulgar, comment. But I am of the view that it would be harsh to send a youth like the appellant to the Juvenile Rehabilitation Centre, even for six months.

12 It was argued by the learned prosecutor, relying on the probation suitability report, that the appellant's recent behaviour and psychological problems may not make him a suitable candidate for probation. For an order of probation to be viable, a disciplined home is essential, and it was suggested that his mother is unable to cope with him on her own, as his father is ill and is presently bedridden. A probation officer cannot reasonably be expected to provide the sustained attention that the appellant needs. That is a strong argument, but it was based on the past misconduct of the appellant at home and in school (for which the appellant was not charged).

13 However, by the time the appeal came before me, the appellant had returned to school, and his mother, appearing with the appellant's uncle, seemed prepared to manage – and has been managing him since his conviction. That has been more than three months now. More importantly, the vice-principal of his school signed off on a report dated 29 March 2023 that contains assessments by his teacher, school counsellor, school discipline master, and the head of the

school student management. This report covered the period from 2 January 2023 to 28 March 2023 and was, of course, not available when the learned judge sentenced the appellant.

14 It is an encouraging report that shows that the appellant had returned to school since January this year, and has not given any disciplinary problems at all. The report also shows that the appellant has made the effort to relate to his classmates and is beginning to demonstrate due regard for authority. In these circumstances, I am of the view that given the change in circumstances, a probation order instead of detention at the Juvenile Rehabilitation Centre should be ordered.

15 It is obvious that a large part of the appellant's behaviour is influenced by his psychological conditions. I trust that the school and the appellant's mother and uncle will ensure that the medical and psychological needs continue to be attended to. There is no doubt that his autism may have contributed to his adjustment problems. The school report of 29 March 2023 shows that the appellant has been making an effort to behave. At his age, given the circumstances, I think that he should continue, and perhaps improve, at home and in school — under probation.

16 The system is not against him. On the contrary, everyone involved has a part to help him and ensure that his best interests and welfare are safeguarded. His school teachers are concerned about his education and future, his doctors are concerned about helping him with his medical conditions, and most of all, his parents only seek the best for him, even if there is the occasional domestic friction.

17 The probation order will give the appellant a chance to show that his progress over the past three months stems from a realisation of his wrongdoing and the recognition of the multitude of open doors for his rehabilitation and development. But the appellant must also be reminded not to spurn this chance, for should he breach the terms of probation, the only door that will open to him is that of the Juvenile Rehabilitation Centre.

18 For the reasons above, I allow the appeal, and substitute an order for probation in lieu of detention. The period of probation shall be 24 months from the date of this order.

- Sgd -
Choo Han Teck
Judge of the High Court

Appellant in-person
Zhou Yang (Attorney-General's Chambers) for the public prosecutor.
