IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 31

Youth Court Appeal No 2 of 2023/01

Between

WOP

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing – Sentencing – Young offenders]

WOP
v
Public Prosecutor

[2023] SGHCF 31

General Division of the High Court (Family Division) — Youth Court Appeal No 2 of 2023/01
Choo Han Teck J
5, 10 July 2023

14 July 2023

Choo Han Teck J:

1 The Appellant was 14 years old when she pleaded guilty to four charges on 24 August 2022. The first charge was for theft in dwelling under s 380 of the Penal Code 1871 (2020 Rev Ed) ("PC") where the Appellant had stolen items worth a total of $379.70 from a Watsons outlet. Two charges were for cheating with common intention under s 420 read with s 34 of the PC. The Appellant and a friend sold items online, via Carousell ("the Carousell scams") when they did not possess such items. Five other charges involving these Carousell scams were taken into consideration. The final charge was for being a member of an unlawful assembly with the common object of voluntarily causing hurt under s 141 read with s 142 and punishable under s 143 PC. The Appellant was part of a group of teenagers who assaulted a 22-year-old male.

2 The Appellant had mixed with delinquent company, and had a history of delinquent behaviour such as smoking, vaping, alcohol consumption, and engaging in underaged sex. She often went home late and sometimes not at all. Her parents sought help from the Singapore Children's Society, but the pre-Family Guidance programme for her was not effective, and she was referred to the Child Protective Service ("CPS") no less than six times, concerning domestic violence by her then-boyfriend and her delinquent behaviours. The CPS found that the Appellant's parents were unable to supervise or control her. Her counsel told the court that her parents were going through an acrimonious divorce.

3 The Appellant's behaviour did not improve even after being charged. Having posted bail for the Appellant, her mother discharged herself as a bailor less than a month later (on 21 September 2022) when she found 50 canisters of butane gas in the Appellant's room (on 7 September 2022). The Appellant also breached her bail conditions and continued to frequently consume alcohol. The Appellant's father took over and posted bail. But the Appellant continued to mingle with delinquent company. Her mother subsequently found more canisters of butane gas in her room. This led to bail being revoked on 12 October 2022. A second chance was given to the Appellant on 7 November 2022 where she was once again given bail. However, the Appellant breached the conditions of bail repeatedly and this resulted in bail being revoked on 15 December 2022.

4 On 21 November 2022, the CPS invoked a Protector's Order and had the Appellant admitted into the Singapore Girl's Home ("SGH") for the benefit of discipline and her safety. The Appellant remains remanded at SGH since her admission on 23 November 2022. The learned judge of the Youth Court ("DJ") sentenced the Appellant to 21 months detention at SGH.

5 Prior to sentencing, the DJ called for a probation report. In that report, dated 15 February 2023, the probation officer recommended that the Appellant be placed in a Juvenile Rehabilitation Centre (i.e., SGH) for 21 months because she assessed the Appellant unsuitable for probation. The probation officer's reasons were that —

(a) the risk of the Appellant re-offending was high compared to other female offenders;

(b) the Appellant needed a structured and disciplined environment which she lacked at home; and

(c) the Appellant did not appear responsive to a community-based rehabilitation program.

6 The DJ accepted the probation officer's report and the probation officer's recommendation in view of the history of intervention work with the Appellant and her family. She thus ordered the Appellant to serve 21 months in the SGH. The DJ found that there was no progress in rehabilitating the Appellant through community-based programmes and the Appellant was not receptive to such measures. The DJ also found that there was lack of family support, which was an important factor for a community-based rehabilitation option. Furthermore, the DJ also observed that the Appellant's father was not suitable to be the supervising parent.

7 The Appellant appeals against this order. She wishes the duration of the order to be reduced to a shorter term of 12 months or less, with the order taking effect from 28 February 2023. She disagrees with the probation officer's recommendation of 21 months. Her counsel argues that the DJ should have evaluated the factors listed out in the probation report more critically before

ordering the 21 months. Counsel suggested that the Appellant was unaffected by the acrimony between her parents, and that her delinquent behaviour arose from her wanting to have fun and to "live in the moment".

8 I accept that the Appellant maintains a cordial relationship with her parents, but the probation officer's recommendation was made on a different basis that the Appellant needed a structured and disciplined environment that her family could not provide. This was because of "inconsistent and inappropriate parenting" in the Appellant's home, which "[had] likely perpetuated her unbridled and ill-disciplined lifestyle". A cordial relationship between a parent and a child does not necessarily lead to a suitable environment for the child — especially one in need of rehabilitation. On the contrary, the history of the Appellant's failed community-based rehabilitation emphasises the absence of a conducive environment for rehabilitation at home.

9 The DJ was entitled to give much weight to the probation officer's report. As the court in *A Karthik v Public Prosecutor* [2018] 5 SLR 1289 at [79] held:

> In my view, it makes good sense for the court to give careful consideration to the reports prepared by probation officers. It is the probation officer who is usually best apprised of the offender's circumstances and, hence, of his suitability for the probation regime. Therefore, the court should ordinarily be slow to depart from the recommendations of a probation officer unless: (a) it is clear that the circumstances upon which the probation officer's recommendations were based were factually incorrect or have since changed materially; or (b) there was no proper basis for the probation officer's recommendations.

The probation report remains the first and a major factor in a trial judge's consideration, but the judge will also need to consider all other relevant factors to see if any of them may operate to justify a different conclusion. It was apparent that the Appellant committed her offences with various other

offenders. Who those offenders were, how old they were, and how had they been dealt with become not just relevant but important. When the learned DPP provided the information, I could see that the Appellant's co-accused were dealt with differently. It remained for me to see whether taking all those factors into account, the sentence ought to be varied.

10 Considering them, I am of the view that the DJ's order was correct and fair. Apart from just relying on the probation report, the DJ had taken the history of failed intervention work with the Appellant and her family into account. She had also considered the conflicting relationship between both parents, and the various statements made by the father. There was nothing on the facts to suggest that the DJ had not applied her mind to the case and simply accepted the probation officer's report and recommendation.

11 The Appellant's counsel further pointed out various alleged inaccuracies in the probation report. This included the statement that the Appellant started abusing butane gas in mid-2022 instead of September 2021; and that the Appellant did not meet with the police after an incident on 16 November 2022 where her father was caught on the CCTV "pulling [her] hair, kicking her at the stomach twice, slapping her on the face, throwing a cushion and hurling vulgarities at her".

12 Even if I were to accept these allegations, they are not material and do not affect the overall report. The Appellant's own version of events on appeal shows why she is unsuitable for probation. The Appellant does not dispute that she had continued with her abuse of butane gas even after being charged with the various offences on 24 August 2022. Furthermore, the probation officer reported that the harsh physical punishment on the Appellant on 16 November 2022 was an instance of the "inconsistent and inappropriate parenting".

13 Lastly, counsel raised various mitigating factors which he submitted that the DJ had not considered, or had given little or no weight to before making the order for 21 months in SGH. The mitigating factors include:

(1) the Appellant's young age;

(2) full restitution having been made;

(3) being a first-time offender;

(4) being a victim of circumstances;

(5) pleading guilty at the first given opportunity;

(6) this being a case of youthful adventurism; and

(7) that the Appellant was remorseful.

The problem with the Appellant's submissions here is that these mitigating factors are not relevant to her rehabilitation. In some cases, such factors may augment other evidence suggesting an amenability to rehabilitation through probation, but this is not such a case. The primary concern in matters relating to the administration and application of the Children and Young Persons Act 1993 (2020 Rev Ed) ("CYPA") is that "the welfare and best interests of the child or young person must be the first and paramount consideration": see s 4(*b*) CYPA. In the present case, the paramount consideration is the rehabilitation of the Appellant, and this was the basis on which the DJ made her orders. I agree with the DJ below that the 21 months is necessary and fair for the purposes of rehabilitation.

14 The Appellant struggles with various addictions like butane sniffing, smoking and alcohol consumption, all of which require professional

intervention and time to address. She also needs to be insulated from delinquent company, bearing in mind that other community-based rehabilitation measures have already been repeatedly unsuccessful.

15 Counsel for the Appellant submitted that since the Appellant has shown improvement during her stay at SGH, not to let her back into the community early would be tantamount to "punishing" the Appellant for her good behaviour and progress in SGH. With respect, I must disagree with counsel. The Appellant's progress in SGH indicates that the structured and disciplined environment which the probation officer had recommended, is effective. It is not a punishment for the Appellant to continue her rehabilitation, but to ensure that it will be enduring.

16 For the reasons above, I dismissed the appeal.

- Sgd -
Choo Han Teck
Judge of the High Court

Toh Siew Sai Thomas and Tan Cheng Kiong (CK Tan Law Corporation) for the Appellant;
Lim Yu Hui (Attorney-General's Chambers) for the Respondent;
Ranjit Singh and Andre Teo (Francis Khoo & Lim) for Appellant's mother (watching brief).