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

[2023] SGHC 207

Magistrate's Appeal No 9152 of 2022

Between

Prasanth s/o Mogan

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Young offenders]

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Introduction

1 The Appellant, Mr Prasanth s/o Mogan, was 19 years old at the time of the offences. He pleaded guilty in the District Court to a charge of rioting with a deadly weapon under s 148 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC") and a charge of voyeurism under s 377BB(4) PC. He also consented to a third charge of criminal intimidation under s 506 PC being taken into consideration for the purposes of sentencing. The District Judge ("the DJ") sentenced the Appellant to reformative training ("RT") with a minimum detention period of 12 months (see *Public Prosecutor v Prasanth s/o Mogan* [2022] SGDC 209 ("GD")).

2 In Magistrate's Appeal No 9152 of 2022, the Appellant sought a sentence of probation on the grounds that: (a) the DJ was wrong to identify

retribution as a relevant sentencing consideration; and (b) a sentence of probation would, in any event, adequately meet any need for deterrence and retribution.

3 At the conclusion of the hearing on 27 July 2023, I dismissed the appeal. I now set out the reasons for my decision.

Undisputed facts

4 The offences were committed on 2 March 2021 against a 17-year-old male victim ("the Victim").[1] The co-accused persons were Satish Jason s/o Prabahas ("Satish"), Sharan Boy Joseph s/o Prabahas ("Sharan"), Veeranaarth s/o V Kannan ("Veeranaarth") and [AAA],[2] male persons of 18 to 22 years of age.[3]

5 Prior to the offences, the Appellant, Satish and Sharan were involved in an ongoing dispute with the Victim concerning the Victim's interactions with one "Nithiya". Nithiya was the Victim's ex-girlfriend and the Appellant's then-girlfriend, as well as Satish's and Sharan's younger sister.[4]

6 On 1 March 2021, sometime after 9.30pm, the Appellant instructed Veeranaarth to obtain and provide him with the Victim's location.[5] Veeranaarth thus arranged a meet-up with the Victim at the rooftop of the multi-storey

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1 ROA at p 7 (Statement of Facts ("SOF") at para 4).

2 The name of this young person is redacted in accordance with s 112 of the Children and Young Persons Act 1993 (2020 Rev Ed).

3 ROA at p 7 (SOF at para 2).

4 ROA at p 8 (SOF at para 6).

5 ROA at p 8 (SOF at para 8).

carpark located at 693A Woodlands Avenue 6, Admiralty Grove ("the Incident Location"). Veeranaarth also invited along one "Yuvaraj", a 20-year-old male, on the pretext of having drinks with the Victim.[6] At about 10.00pm, Veeranaarth and Yuvaraj met the Victim at the Incident Location. While they were chatting and drinking alcohol, Veeranaarth called the Appellant to inform him of their location.[7]

7 On 2 March 2021, at about 12.15am, the Appellant arrived at the Incident Location with Satish, Sharan and AAA.[8] The Appellant and the co-accused persons then attacked the Victim in prosecution of their common object to voluntarily cause hurt to him:[9]

(a) Upon noticing the arrival of the Appellant, Satish, Sharan and AAA, Veeranaarth held the Victim's arms and punched his jaw area once to prevent him from escaping, causing him to fall to the ground and land among some bushes.[10]

(b) While the Victim was on the ground, the Appellant and the co-accused persons punched, kicked and stepped on his head and torso area several times.[11]

(c) The Appellant then took out a pocket-knife and threatened to slash the Victim if he did not get out of the bushes. As the Victim felt

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6 ROA at p 8 (SOF at para 8).

7 ROA at p 8 (SOF at para 10).

8 ROA at p 8 (SOF at para 10).

9 ROA at pp 8–9 (SOF at paras 10-11).

10 ROA at pp 8–9 (SOF at para 11).

11 ROA at pp 8–9 (SOF at para 11).

weak and could not get up, the Appellant slashed his right forearm once with the pocket-knife.[12]

(d) The Appellant further threatened to stab the Victim if he did not stand up. While the Victim was attempting to do so, Satish and Sharan punched his face and torso area, causing him to fall down a second time.[13]

(e) Veeranaarth and AAA then kicked and punched the Victim's head and torso area.[14]

8 Yuvaraj was not involved in the attack.[15]

9 Next, the Appellant removed the Victim's clothing with the assistance of Satish, Sharan and AAA. The Appellant then used his handphone to record a video of the Victim naked while Veeranaarth turned on a flashlight to ensure that he was visible. During the recording of the video, the Appellant also instructed the Victim to dance. The Victim's genitals were visible in the video.[16]

10 When the Appellant was satisfied with the video recorded, he asked the Victim to kiss his shoe. The Victim complied. The Appellant then threw the Victim's clothing into the bushes.

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12 ROA at pp 8–9 (SOF at para 11).

13 ROA at p 9 (SOF at para 12).

14 ROA at p 9 (SOF at para 12).

15 ROA at pp 8–9 (SOF at para 11).

16 ROA at p 9 (SOF at para 13).

11 Before leaving the Incident Location, the Appellant threatened that he would leak the video on social media if the Victim were to lodge a police report over the incident.[17]

12 On 3 March 2021, the Victim was examined at the Acute and Emergency Care Centre of Khoo Teck Puat Hospital. In a medical report prepared by Dr Francesca Thng dated 4 June 2021, the Victim was noted to have sustained the following injuries:[18]

(a) left maxillary sinus and left orbital fractures;

(b) right forearm laceration wounds;

(c) left chest wall and hypochondrium muscle strain;

(d) abrasion wounds "secondary to claimed assault"; and

(e) incidental prominent nasopharynx soft tissues.

The proceedings below

13 On 6 April 2022, the Appellant pleaded guilty to a charge of rioting with a deadly weapon under s 148 PC and a charge of voyeurism under s 377BB(4) PC.[19] He also consented to a third charge of criminal intimidation under s 506 PC being taken into consideration for the purposes of sentencing.[20] The third

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17 ROA at p 9 (SOF at para 14).

18 ROA at pp 9-11 (SOF at paras 16-17 and Annex A).

19 ROA at p 22 (6 April 2022 Transcript at p 1 lines 12-15 and 18-20).

20 ROA at p 27 (6 April 2022 Transcript at p 6 lines 6-8).

charge related to the Appellant's threat to leak the video on social media if the Victim were to lodge a police report.

14 In view of the Appellant's youth, the DJ called for pre-sentencing reports to assess his suitability for probation and RT.

15 In the Probation Officer's Report dated 13 May 2022 ("the Probation Report"), the Appellant was found suitable for probation[21] and recommended for 24 months' split probation (six months intensive, 18 months supervised) subject to the following conditions:[22]

(a) a time restriction between 11.00pm and 6.00am;

(b) a six-month electronic monitoring scheme;

(c) 80 hours of community service;

(d) attendance of a Decision Making and Conflict Resolution Workshop; and

(e) the Appellant's father to be bonded.

16 In the Pre-Sentencing Report for RT dated 10 May 2022 ("the RT Report"), the Appellant was found physically and mentally suitable for RT[23] and recommended for Level 2 intensity of rehabilitation.[24]

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21 ROA at p 102 (Probation Report dated 13 May 2022 ("Probation Report") at p 2).

22 ROA at p 101 (Probation Report at p 1).

23 ROA at pp 91–92 (Reformative Training Suitability Report dated 10 May 2022 ("RT Report") at pp 2-3).

24 ROA at p 97 (RT Report at p 8).

17 The Prosecution sought a sentence of RT at Level 2 intensity of rehabilitation.[25] Counsel for the Appellant, Mr Muhammed Riyach Bin Hussain Omar ("Mr Riyach"), meanwhile, sought a sentence of probation.[26]

The decision below

18 On 12 August 2022, the DJ sentenced the Appellant to RT with a minimum detention period of 12 months (see GD at [45]).

19 In arriving at his decision, the DJ applied the well-established framework for the sentencing of young offenders, as explained by the High Court in *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [28]:

> It is well established that when a court sentences a youthful offender, it approaches the task in two distinct but related stages (*Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*PP v Al-Ansari*") at [77]–[78]). At the first stage of the sentencing process, the task for the court is to identify and prioritise the primary sentencing considerations appropriate to the youth in question having regard to all the circumstances including those of the offence. This will then set the parameters for the second stage of the inquiry, which is to select the appropriate sentence that would best meet those sentencing considerations and the priority that the sentencing judge has placed upon the relevant ones.

20 At the first stage, the DJ accepted that rehabilitation remained the dominant sentencing consideration on account of the Appellant's youth.[27] However, the DJ also regarded deterrence and retribution as relevant sentencing

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25 ROA at p 116 (Address on Sentence by Prosecution dated 16 May 2022 at para 14).

26 ROA at p 126 (Plea in Mitigation and Skeletal Submission on Sentence dated 1 August 2022 at para 20).

27 GD at [5] and [39].

considerations in view of: (a) the seriousness of the offences; (b) the central role played by the Appellant in orchestrating the assault and humiliating the Victim; and (c) the serious harm caused to the Victim.[28] Given the serious nature of the offences, the fact that the Appellant was a person with special needs and committed the offences out of anger towards the Victim did not detract from the need for deterrence and retribution.[29]

21 At the second stage, the DJ concluded that RT would appropriately balance the sentencing considerations of rehabilitation, deterrence and retribution.[30] Conversely, a sentence of probation would not adequately meet the need for deterrence and retribution, especially because the Appellant did not appear to have appreciated the gravity of his offences.[31]

The parties' cases

22 On appeal, the Appellant sought a sentence of probation instead of RT on the grounds that: (a) the DJ was wrong to identify retribution as a relevant sentencing consideration;[32] and (b) a sentence of probation would, in any event, adequately meet any need for deterrence and retribution.[33]

23 The Prosecution, meanwhile, submitted that the DJ's sentence should be upheld because: (a) the DJ correctly identified deterrence and retribution as

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28 GD at [39].

29 GD at [40].

30 GD at [41]–[42].

31 GD at [43].

32 Appellant's Submissions ("AS") at paras 6–7.

33 AS at paras 8–16.

relevant sentencing considerations alongside the primary sentencing consideration of rehabilitation;[34] and (b) a sentence of probation would not adequately meet the need for deterrence and retribution.[35]

Issues which arose for determination

24 The two-stage framework for the sentencing of young offenders (see [19] above) crystallised the two issues which had to be determined on appeal:

(a) The first issue was whether the DJ correctly identified the relevant sentencing considerations in the present case.

(b) The second issue was whether the DJ selected the appropriate sentence in view of these sentencing considerations.

Issue 1: Whether the DJ correctly identified the relevant sentencing considerations

25 I first considered whether the DJ correctly identified the relevant sentencing considerations in the present case. As noted earlier, despite accepting that rehabilitation remained the primary sentencing consideration, the DJ also regarded deterrence and retribution as relevant sentencing considerations.

26 Preliminarily, I observed that the Appellant was only challenging the relevance of retribution as a sentencing consideration.[36] He accepted, in other words, that a measure of deterrence was necessary in the present case.[37] This

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34 Respondent's Submissions ("RS") at paras 26–33.

35 RS at paras 34–40.

36 AS at para 5a.

37 AS at para 13.

position was somewhat odd because the DJ justified the need for deterrence and retribution by reference to the same factors.[38] Indeed, in my view, the DJ was entitled to do so. Although deterrence and retribution are conceptually distinct sentencing considerations (see *eg*, *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [18]–[34]), certain factors may simultaneously trigger the application of both, at least in so far as young offenders are concerned. In *Boaz Koh*, the High Court stated at [30] that:

> … The focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence *or retribution* where the circumstances warrant. Broadly speaking, this happens in cases where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.
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> [emphasis added]

27 The DJ therefore did not err in identifying retribution as a relevant sentencing consideration. To the contrary, the factors highlighted by the DJ – namely, (a) the seriousness of the offences; (b) the central role played by the Appellant in orchestrating the assault and humiliating the Victim; and (c) the serious harm caused to the Victim – were factors capable of justifying the need both for deterrence *and* retribution.

The seriousness of the offences

28 To begin with, I agreed with the DJ that the offences were serious.

29 The offence of rioting with a deadly weapon under s 148 PC was an extremely serious offence, as reflected in the prescribed punishment of

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[38] GD at [39].

mandatory imprisonment of up to ten years along with the possibility of caning. As the Prosecution pointed out, the offence under s 148 PC constituted the most aggravated form of unlawful assembly offences.[39]

30 The offence of voyeurism under s 377BB(4) was also sufficiently serious, as reflected in the prescribed punishment of up to two years' imprisonment, a fine, caning, or any combination of these punishments. Moreover, in *Nicholas Tan Siew Chye v Public Prosecutor* [2023] SGHC 35 ("*Nicholas Tan*"), a three-judge panel of the High Court observed that such offences offend the sensibilities of the general public and trigger unease, often inflict significant emotional harm on their victims, and generally involve a degree of furtiveness, planning and premeditation (*Nicholas Tan* at [43]–[46]).

The Appellant's central role in the offences

31 Next, I agreed with the DJ that the Appellant played a central role in orchestrating the assault on and humiliating the Victim. I accepted the Prosecution's submission that the Appellant was the most culpable member of the group.[40] The Appellant's contrary submission – that his level of culpability was equal to that of the co-accused persons[41] – was unsustainable on the facts.

32 First, the Appellant was responsible for organising the attack by instructing Veeranaarth to obtain and provide him with the Victim's location.

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39 RS at para 28.

40 RS at para 32.

41 AS at para 17.

33 Second, the Appellant alone wielded a deadly weapon in the attack, which he used to threaten and slash the Victim. This explained why he was charged under s 148 PC. Meanwhile, according to the Prosecution, Satish, Veeranaarth and AAA were charged with the less serious offence of rioting *simpliciter* under s 147 PC.[42]

34 Third, the Appellant played a leading role in humiliating the Victim by recording a video of him naked and forcing him to kiss his shoe. The Appellant alleged that the co-accused persons "motivate[d]" him to record the video.[43] Apart from the lack of evidence in the Statement of Facts to support his claim, it was ultimately the Appellant alone who filmed the video, thereby committing an offence under s 377BB(4) PC. Moreover, the Appellant's culpability in committing the offence was substantial:

(a) He had actual knowledge, rather than mere reason to believe, that the Victim did not consent to be so observed (see *Nicholas Tan* at [76(a)] and [77]).

(b) His motive in filming the video was maliciously to humiliate the Victim (see *Nicholas Tan* at [76(g)] and [80]). This explained why he instructed the Victim to dance while the video was being filmed. Indeed, the present case was specifically described by the High Court in *Nicholas Tan* as "one instance in which the s 377BB(4) PC offence was committed out of malice" (at [80]).

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42 ROA at p 57 (12 August 2022 Transcript at p 2 lines 9–12).

43 AS at para 17.

35 Fourth, the Appellant threatened that he would leak the video on social media if the Victim were to lodge a police report over the incident. This was the subject of the charge under s 506 PC which was taken into consideration.

The serious harm caused to the Victim

36 Finally, I agreed with the DJ that the Appellant caused serious harm to the Victim.

37 The attack caused significant physical harm to the Victim. The Victim's injuries included two fractures to his face (left maxillary sinus and left orbital fractures), which was a vulnerable part of the Victim's body, as well as laceration wounds to his right forearm.

38 The filming of the video also caused serious harm to the Victim:

(a) It constituted a significant invasion of the Victim's privacy (see *Nicholas Tan* at [65(a) and [67]–[72]). The Appellant not only directly observed but filmed the Victim's naked genitals and, in the process, also allowed the co-accused persons to observe the same. It also appeared, from his threat to leak the video, that he not only retained the video subsequent to the offence but did so for the express purpose of using it to blackmail the Victim in the future.

(b) The offence also involved a serious violation of the Victim's bodily integrity (see *Nicholas Tan* at [65(b)] and [73]). In forcibly removing the Victim's clothes, the Appellant would have made prolonged physical contact with the Victim.

(c) The Victim would have been aware of the offending conduct throughout and suffered humiliation as a result (see *Nicholas Tan* at [65(c)] and [74]–[75]).

The Appellant's lack of antecedents

39 The only factor in the Appellant's favour was that he was a first-time offender.[44] However, when weighed against the factors outlined above, I considered that this was insufficient, on its own, to extinguish the need for deterrence *and* retribution.

40 In summary, I found no basis to interfere with the DJ's findings as to the relevant sentencing considerations. While rehabilitation remained the primary sentencing consideration, deterrence and retribution were also warranted in view of: (a) the seriousness of the offences; (b) the central role played by the Appellant in orchestrating the assault and humiliating the Victim; and (c) the serious harm caused to the Victim.

Issue 2: Whether the DJ selected the appropriate sentence in view of the relevant sentencing considerations

41 I next considered whether the sentence imposed by the DJ was appropriate in view of the relevant sentencing considerations.

42 The Appellant submitted that a sentence of probation was appropriate because it would adequately meet any need for deterrence and retribution[45]

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[44] AS at para 12.

[45] AS at paras 5(b) and 13–14.

while affording him an opportunity to rehabilitate himself.[46] I was unable to accept this submission, which not only exaggerated the deterrent and retributive effects of probation but also ignored the rehabilitative character of RT.

The minimal deterrent and retributive effects of probation

43 I agreed with the DJ that a sentence of probation would not have adequately met the need for deterrence and retribution.

44 It is well-established that the deterrent and retributive effects of probation are minimal. In *Boaz Koh*, the High Court remarked that "[p]robation places rehabilitation at the front and centre of the court's deliberation" (at [35], referencing *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 ("*Al-Ansari*") at [41]–[43]). Similarly, in *Al-Ansari*, the High Court adopted the observation in Eric Stockdale & Keith Devlin, *Sentencing* (Waterlow Publishers, 1987) at p 208 that probation is "primarily reformative" (at [41]) and referred to its deterrent effect as "penumbral at best" and "relatively modest in nature" (at [55]–[56]). As Mr Riyach correctly observed, the need for deterrence does not automatically preclude probation as a sentencing option.[47] However, where – as was the case here – the need for deterrence and retribution is substantial, a sentence of probation would be inappropriate.

45 The DJ also considered that RT was necessary to impress upon the Appellant the severity of his offences, especially because the Probation and RT Reports indicated that he had minimised his role in the offences and externalised

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46 AS at paras 8 and 18.

47 AS at para 13.

blame. The Appellant took issue with this finding, claiming that he was "truly remorseful for [his actions]" and was "not trying to absolve himself of any blame".[48] I disagreed. In my judgment, it was clear that the Appellant consistently sought to downplay his responsibility for the offences:

(a) According to the RT Report, the Appellant attributed responsibility to his friends and the Victim, and minimised the seriousness of his actions.[49] To illustrate, the Appellant claimed that he was "forced" to take the video of the Victim by his friends, who kept asking him to do so.[50] He also blamed the Victim for scolding and pushing him, and described his slash to the Victim's forearm as a "small slash".[51] In addition, the Appellant presented an account which was not fully consistent with the Statement of Facts. He denied, for example, that he had removed the Victim's clothes.[52]

(b) According to the Probation Report, the Appellant minimised his role in the offences and externalised blame, indicating a lack of readiness to take responsibility for his actions.[53] To illustrate, the Appellant again claimed that his friends had asked him to record the video of the Victim. In fairness, the Appellant also said that he "[f]elt stupid for committing the offence" and accepted that the Victim "did not

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48 AS at para 9.

49 ROA at pp 96-97 (RT Report at p 7–8).

50 ROA at p 97 (RT Report at p 8).

51 ROA at p 97 (RT Report at p 8).

52 ROA at pp 94 and 97 (RT Report at pp 5 and 8).

53 ROA at p 104 (Probation Report at p 4).

deserve it".[54] However, the overall impression conveyed by the Probation Report was that the Appellant remained unprepared to accept full responsibility for his actions.

(c) In the proceedings below, Mr Riyach had asserted, on the Appellant's instructions, that the Victim was facing rape charges and that the offences were committed against the Victim because the Appellant "understood what kind of person this fellow was".[55]

(d) In Mr Riyach's written submissions on appeal, the Appellant maintained that the offences stemmed from "legitimate anger", although, in fairness, he conceded that they also resulted from his failure to exercise consequential thinking.[56]

46 I therefore agreed with the DJ that a sentence of probation would not have adequately met the need for deterrence and retribution. Nor would it have sufficiently impressed upon the Appellant the severity of his offences.

The rehabilitative character of reformative training

47 The Appellant emphasised the primacy of rehabilitation as a sentencing consideration[57] as well as his good rehabilitative prospects.[58] However, this submission did not take him very far because RT, like probation, is

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54 ROA at p 109 (Probation Report at p 9).

55 ROA at p 64 (12 August 2022 Transcript at p 9 lines 18–22).

56 AS at para 15.

57 AS at para 4.

58 AS at paras 15–16.

rehabilitative in its objective and character. As the High Court remarked in *Boaz Koh* at [36]:

> While it is clear that probation is conducive to rehabilitation, I emphasise that it is not the only sentencing option for a youthful offender where rehabilitation remains the dominant sentencing consideration. Reformative training too is geared towards the rehabilitation of the offender …

48 Indeed, RT is now regarded as the preferred sentencing option where – as was the case here – rehabilitation remains the primary sentencing consideration, but a degree of deterrence and retribution is also required. The High Court acknowledged this in *Al-Ansari* at [58] and [65]:

> 58 … As such, it is my view that the sentencing option of reformative training provides the courts with a middle ground that broadly encapsulates the twin principles of rehabilitation and deterrence in relation to young offenders.
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> …
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> 65 Apart from probation orders, reformative training functions equally well to advance the dominant principle of rehabilitation, and may even represent a better balance between the need for rehabilitation and deterrence. …

49 Moreover, in the present case, there was reason to believe that RT's structured and regimented environment would prove beneficial to the Appellant's rehabilitation. According to the Probation Report, the Appellant committed several breaches of his time restriction and forfeited appointments with his Probation Officer on multiple occasions.[59] In addition, despite the Appellant's claim that his family support was good,[60] there was evidence to suggest that his father was unable to control him. As the Prosecution observed, the offences were committed in violation of a 12.00am curfew which the

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[59] ROA at p 110 (Probation Report at p 10).

[60] AS at para 15.

Appellant's father had imposed on him since 2014.[61] The Appellant had lied to his father that he was still working at the time of the offences.[62]

50 Thus, I agreed with the DJ that RT (with a minimum detention period of 12 months) was the appropriate sentence which best addressed the sentencing considerations of rehabilitation, deterrence, and retribution.

The principle of parity

51 Finally, I considered the Appellant's submission that, as two of the co-accused persons were sentenced to probation,[63] the principle of parity required a sentence of probation to have been similarly meted out in his case.

52 I rejected this submission. The principle of parity does not prohibit a sentencing court from differentiating between co-accused persons where "there is a relevant difference in their responsibility for the offence or their personal circumstances" (see *Public Prosecutor v Ramlee and another action* [1998] 3 SLR(R) 95 at [7]). In the present case, there were indeed multiple relevant differences between the Appellant's level of responsibility for the offences and that of the co-accused persons (see [31]–[35] above). First, the Appellant had committed a more serious offence of rioting with a deadly weapon under s 148 PC instead of rioting *simpliciter* under s 147 PC. Second, he had committed an additional offence under s 377BB(4) PC, and had consented to a third charge under s 506 PC being taken into consideration. Third, the overall role played by the Appellant was far more central than that of the other co-accused persons. In

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61 ROA at p 105 (Probation Report at p 5).

62 ROA at p 109 (Probation Report at p 9).

63 AS at para 17.

the circumstances, an enhanced sentence against the Appellant was not inconsistent with the principle of parity.

Conclusion

53 For these reasons, I dismissed the appeal against sentence.

Vincent Hoong
Judge of the High Court

Muhammed Riyach Bin Hussain Omar (H C Law Practice) for the appellant;
Derek Ee (Attorney-General's Chambers) for the respondent.