

# Deterrence? Or Mercy and Second Chances? An Evaluation of the Singaporean Judiciary's Attempts to Tread a Tightrope in Sentencing

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## I. Introduction

1. If one used one word to describe Singapore's criminal justice system, what would it be? For many, the word would likely be "deterrence". Singapore's criminal justice system has always had a reputation for being tough on crime and meting out long and harsh sentences to deter both convicted and potential offenders.<sup>1</sup> With recent events like the doubling of a sex offender's jail term after his appeal for a shorter sentence<sup>2</sup> and the imposition of the death penalty on a young, intellectually disabled Malaysian for drug trafficking<sup>3</sup> after many years of appeals and international resistance,<sup>4</sup> some may even see Singapore's courts as merciless in its attempts to deter crime and opposed to giving offenders second chances.
2. However, whilst the courts clearly favour deterrence over judicial mercy with how sparingly judicial mercy is exercised,<sup>5</sup> they have not necessarily favoured deterrence over rehabilitation as well. Whilst deterrence is undoubtedly the predominant sentencing consideration for sexual, drug and hurt-related offences, the courts have also recognised that many offenders, particularly youths or those with mental disorders, deserve second chances. The courts have often focussed on rehabilitation in sentencing for such offenders, except where there are compelling facts to justify departing from this position. Therefore, the courts have not been inconsistent or unduly focussed on deterrence in sentencing.

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<sup>1</sup> See Rajah, J. "Flogging Gum: Cultural Imaginaries and Postcoloniality in Singapore's Rule of Law". *Law Text Culture* 18, 2014: 135–165. See also Singapore Academy of Law "A Commemorative Issue in tribute of Mr Yong Pung How's contributions as Chief Justice of the Republic of Singapore" *Inter Se Commemorative Issue 2006* at p 1 and p 12.

<sup>2</sup> *Wong Tian Jun De Beers v Public Prosecutor* [2021] SGHC 273.

<sup>3</sup> *Nagaenthran a/l K Dharmalingam v Attorney-General and another matter* [2022] SGCA 26.

<sup>4</sup> Yvette Tan, "Singapore executes man on drugs charge, rejecting mental disability plea", *BBC News* (27 April 2022) < <https://www.bbc.com/news/world-asia-61239221> > (accessed 29 June 2022).

<sup>5</sup> *M Raveendran v Public Prosecutor* [2022] 3 SLR 1183 at [63]. See also Section II below.

## II. Deterrence almost invariably outweighs judicial mercy

3. The case of *Chew Soo Chun v Public Prosecutor and another appeal* (“Chew”)<sup>6</sup> espoused the tension between judicial mercy and deterrence in sentencing. The court first stated that the exercise of judicial mercy involved the “weighing [of] public interests in punishing crimes to denounce it and ... to safeguard society, and the interests against punishment that would unduly place gravely ill offenders at risk”, to determine if “humanitarian considerations ... prevail over other interests of society”.<sup>7</sup>
4. It then expressed concern that, since judicial mercy results in a reduction of an offender’s custodial sentence to a nominal one,<sup>8</sup> it could “endorse the view that ill health is a licence to commit crime or ... shield an offender from the consequences of his conduct”<sup>9</sup> if employed excessively, thus undermining the deterrent effect of the criminal justice system. Eventually, it concluded that deterrence was the more significant sentencing consideration. Judicial mercy was to remain an exceptional jurisdiction,<sup>10</sup> invoked only where an offender was suffering from a terminal illness, or where a custodial term would endanger his life.<sup>11</sup>
5. Indeed, that deterrence almost invariably outweighs judicial mercy is illustrated by the multitude of cases whereby the courts declined to exercise this power.<sup>12</sup> In *Chew* itself, the court did not exercise judicial mercy<sup>13</sup> despite the appellant’s multiple medical conditions, including major depression, claustrophobia, cancer, and a blood clot in one of the arteries leading to the brain.<sup>14</sup> Since the appellant had committed multiple counts of aggravated cheating, there was “substantial public interest” in meting out a non-

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<sup>6</sup> *Chew Soo Chun v Public Prosecutor and another appeal* (“Chew Soo Chun”) [2016] 2 SLR 78 (HC).

<sup>7</sup> *Ibid* at [25].

<sup>8</sup> *Ibid* at [28].

<sup>9</sup> *Ibid* at [26].

<sup>10</sup> *Ibid* at [23] and [26].

<sup>11</sup> *Ibid* at [22].

<sup>12</sup> *Md Anverdeen Basheer Ahmed and Others v Public Prosecutor* [2004] SGHC 233 at [69]; *Lim Teck Chye v Public Prosecutor* [2004] 2 SLR(R) 525 at [82]; *PP v Lee Shao Hua* [2004] SGDC 161; *PP v Shaik Raheem s/o Abdul Shaik Shaikh Dawood* [2006] SGDC 86 at [277]; *Chua Siew Peng v Public Prosecutor and another appeal* [2017] 4 SLR 1247; *Public Prosecutor v Tan Kok Ming Michael and other appeals* [2019] 5 SLR 926 at [142] – [148]; *Goh Chin Soon v Public Prosecutor* [2021] 4 SLR 401.

<sup>13</sup> *Ibid* at [17] and [74].

<sup>14</sup> *Chew Soo Chun*, *supra* n 6 at [13] – [15].

nominal custodial sentence “to fulfil the aims of both general and specific deterrence”. A 32-month custodial sentence was therefore warranted,<sup>15</sup> and the appellant could not be excused due to his medical conditions since the prison authorities would provide him with adequate medical treatment.<sup>16</sup>

6. In the sole criminal case where the court exercised judicial mercy,<sup>17</sup> the applicant was suffering from end-stage renal failure, requiring him to undergo daily dialysis. It would have been extremely difficult for the prison to provide such intensive daily medical treatment, especially since improper administration could easily lead to life-threatening complications.<sup>18</sup> Even then, beyond solely humanitarian concerns, the court was also persuaded by other mitigating factors. This included the accused’s remorse, his unlikelihood to re-offend and that his offences were solely motivated by his desperation to survive in the absence of an eligible organ donor.<sup>19</sup>

### **III. Courts do not necessarily favour deterrence over rehabilitation**

7. Clearly, deterrence almost invariably outweighs judicial mercy in sentencing, with how infrequently judicial mercy has been exercised. However, it does not necessarily always override rehabilitation as well. Whilst the judiciary undoubtedly prioritises deterrence for sexual and hurt-related offences, it has arguably prioritised rehabilitation in equal measure for offences committed by young offenders or offenders with mental disorders.

#### **A. *Deterrence is clearly the predominant sentencing principle for sexual and hurt-related offences***

8. In *Chua Siew Peng v Public Prosecutor and another appeal* (“*Chua Siew Peng*”),<sup>20</sup> the court reaffirmed that deterrence is the primary sentencing consideration in offences relating to hurt against domestic helpers. It stated that a custodial sentence would be

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<sup>15</sup> *Public Prosecutor v Chew Soo Chun* [2015] SGDC 22 at [22]. The District Judge’s sentence was affirmed by the High Court.

<sup>16</sup> *Chew Soo Chun*, *supra* n 6 at [58].

<sup>17</sup> *Public Prosecutor v Tang Wee Sung* [2008] SGDC 262.

<sup>18</sup> *Ibid* at [51] – [52].

<sup>19</sup> *Ibid* at [7] and [53].

<sup>20</sup> *Chua Siew Peng v Public Prosecutor and another appeal* [2017] 4 SLR 1247.

almost invariably warranted where there has been any physical abuse against a domestic helper, even where there are no serious injuries.<sup>21</sup> True to its word, it sentenced the accused to 24 weeks of imprisonment for voluntarily causing hurt to and falsely imprisoning her domestic helper, notwithstanding that the physical hurt inflicted was not severe.<sup>22</sup>

9. Meanwhile, the case of *Public Prosecutor v Siow Kai Yuan Terence*<sup>23</sup> emphasised that deterrence was also the primary sentencing consideration for sexual offences by adult offenders.<sup>24</sup> Rehabilitation would not be the predominant consideration unless the offender could demonstrate an “extremely strong propensity for reform or other exceptional circumstances”.<sup>25</sup>
10. The court then set out a three-limbed test for when rehabilitative sentencing could be considered in such cases. First, the offender had to demonstrate a positive desire to change his behaviour. Second, conditions in the offender’s life had to be conducive to his reformation. Lastly, even if the offender had demonstrated an extremely strong propensity for reform, the court must then reconsider this finding in view of the risk factors present.<sup>26</sup>
11. The court’s application of this test also clearly illustrated its demanding nature. Despite the accused’s good academic track record, his lack of further offences in 18 months and his parents’ willingness to supervise him on probation, the court held that he had not demonstrated a strong propensity for reform. It assigned no significance to his academic performance<sup>27</sup> and felt that 18 months without reoffending was too short of a period to infer any potential for reform.<sup>28</sup> It also believed that the offender’s parents would be unable to supervise him adequately even within the same household, given the accused’s history of consuming pornography in the “most private of circumstances” which had emboldened him to commit his offences.<sup>29</sup>

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<sup>21</sup> *Ibid* at [106].

<sup>22</sup> *Chua Siew Peng*, *supra* n 20 at [139].

<sup>23</sup> *Public Prosecutor v Siow Kai Yuan Terence* (“*Terence Siow (HC)*”) [2020] 4 SLR 1412.

<sup>24</sup> *Ibid* at [43].

<sup>25</sup> *Ibid* at [42].

<sup>26</sup> *Ibid* at [55].

<sup>27</sup> *Ibid* at [5].

<sup>28</sup> *Ibid* at [73].

<sup>29</sup> *Ibid* at [78] – [79].

12. Furthermore, even if the offender had passed the first two stages, the court was clear that at the third stage, rehabilitation could still be displaced by deterrence due to the gravity of the offence,<sup>30</sup> evidencing the clear predominance of deterrence over rehabilitation for sexual offences committed by adult offenders.

***B. Rehabilitation often outweighs deterrence for youth and offenders with mental disorders***

13. However, for offences committed by youth offenders or offenders with mental disorders, the courts have been vocal about the primacy of rehabilitation over deterrence instead.

*(1) Youth offenders*

14. In *Muhammed Zuhairie Adely bin Zulkifli v PP* (“Zulkifli”),<sup>31</sup> the court reaffirmed that “it is trite that rehabilitation is the dominant sentencing consideration when dealing with youthful offenders”.<sup>32</sup> Even where the harm caused by the offender was severe, rehabilitation may not be displaced by deterrence<sup>33</sup> unless the offender was recalcitrant, or rehabilitative options were not viable.<sup>34</sup>

15. In *Zulkifli*, a first-time youthful offender was charged with grievous hurt and rioting. For the grievous hurt charge, the appellant had slashed someone with a bread knife at an open-air meeting area in front of many others, seriously injuring the victim. The District Judge (“DJ”) had sentenced the appellant to 24 months of imprisonment and six strokes of the cane for both offences, stating that rehabilitation had been displaced by deterrence owing to the severity of the grievous hurt offence.<sup>35</sup>

16. On appeal, the High Court (“HC”) substituted the custodial sentence with reformatory training (“RT”). The court held that rehabilitation had been diminished, but not totally eclipsed by deterrence. Although the offences were serious, the appellant was a first-

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<sup>30</sup> *Terence Siow (HC)*, *supra* n 23 at [60].

<sup>31</sup> *Muhammad Zuhairie Adely bin Zulkifli v Public Prosecutor* (“Zulkifli”) [2016] 4 SLR 697.

<sup>32</sup> *Ibid* at [22].

<sup>33</sup> *Ibid* at [29].

<sup>34</sup> *Ibid* at [23].

<sup>35</sup> *Ibid* at [14] – [17].

time offender with potential and motivation for reformation, having already taken proactive steps after his arrest to lead a more pro-social lifestyle.<sup>36</sup> RT was thus the most suitable sentence to balance deterrence and rehabilitation.<sup>37</sup>

17. More recently, in *Public Prosecutor v ASR*, the offender was sentenced to RT instead of imprisonment for one count of aggravated rape and two counts of sexual assault.<sup>38</sup> Despite the severity of his offences, rehabilitation remained the predominant sentencing consideration due to his young age, coupled with his severe intellectual disability which significantly affected his ability to control his criminal impulses.<sup>39</sup>

(2) *Offenders with mental disorders*

18. Rehabilitation has also been the predominant consideration in the sentencing of offenders with mental disorders. In *Public Prosecutor v Kong Peng Yee* (“*Kong Peng Yee*”),<sup>40</sup> the court emphasised that where a mental disorder significantly impairs the offender’s ability to appreciate the nature of his actions, rehabilitation would take precedence.<sup>41</sup> Comparatively, deterrence, which was premised on the cognitive normalcy of both the offender and potential offenders, would be insignificant since punishment was unlikely to have any effect on an irrational mind.<sup>42</sup> Although *Kong Peng Yee* involved an adult offender committing violent culpable homicide, as he had only done so due to a bout of severe psychosis, his culpability was low.<sup>43</sup> Thus, the court imposed a relatively short sentence of six years,<sup>44</sup> further emphasising that this was meant to rehabilitate the offender by ensuring he took his medications regularly to stabilise his condition.<sup>45</sup>

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<sup>36</sup> *Zulkifli, supra* n 31 at [45] – [52].

<sup>37</sup> *Ibid* at [53].

<sup>38</sup> *Public Prosecutor v ASR* [2019] 1 SLR 941.

<sup>39</sup> *Ibid* at [113].

<sup>40</sup> *Public Prosecutor v Kong Peng Yee* [2018] 2 SLR 295.

<sup>41</sup> *Ibid* at [59].

<sup>42</sup> *Ibid* at [69] – [72].

<sup>43</sup> *Ibid* at [75].

<sup>44</sup> This is considering that a sentence of life imprisonment may be imposed for culpable homicide, as per s 304(a)(i) of the Penal Code (Cap 224, 2008 Rev Ed).

<sup>45</sup> *Ibid* at [100].

19. More recently, *GCX v Public Prosecutor* (“GCX”)<sup>46</sup> also illustrated the courts’ openness to rehabilitative sentencing for offenders with mental disorders, especially following the introduction of community-based sentencing (“CBS”).
20. In *GCX*, a 36-year-old man charged with voluntarily causing grievous hurt to his former wife in front of their daughter. At first instance, the DJ held that general deterrence took precedence as this was a case of domestic violence resulting in serious physical injury. Whilst the DJ accepted the assessment by the Institute of Mental Health (“IMH”) that the appellant was suffering from an adjustment disorder during the offence, she opined that as divorce proceedings had concluded before the offence, the stressors contributing to the disorder had fallen away by then. The DJ also asked the appellant if he would attend a Community Court Conference (“CCC”) facilitated by a court psychologist, but the appellant declined. The DJ then concluded the appellant was either unwilling to receive or did not require treatment. Hence, she did not call for a Mandatory Treatment Order (“MTO”) suitability report and sentenced the appellant to a 12-week custodial sentence.<sup>47</sup>
21. This decision was overturned by the HC.<sup>48</sup> The HC emphasised that Parliament’s intention in introducing CBS, including MTOs, was to give the courts more opportunities to utilise rehabilitative sentencing.<sup>49</sup> It set a low threshold for ordering an MTO suitability report – a report could be ordered as long as there were sufficient facts showing that the offender had some rehabilitative potential, and rehabilitation was not completely outweighed by other sentencing considerations.<sup>50</sup> It held that the DJ erred in inferring that the appellant was unwilling to receive or did not require psychiatric treatment merely because he did not wish to attend the CCC, and should have ordered for an MTO suitability report for a psychiatrist to assess this.<sup>51</sup> The HC also accepted the findings in the IMH report that the appellant’s adjustment disorder “substantially contributed to the offence” and substituted the custodial sentence with an MTO since rehabilitation outweighed general deterrence on this finding.<sup>52</sup>

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<sup>46</sup> *GCX v Public Prosecutor* (“*GCX (HC)*”) [2019] 3 SLR 1325 (HC).

<sup>47</sup> *Public Prosecutor v GCX* [2018] SGDC 130.

<sup>48</sup> *GCX (HC)*, *supra* n 46 at [3].

<sup>49</sup> *Ibid* at [32].

<sup>50</sup> *Ibid* at [37].

<sup>51</sup> *Ibid* at [21].

<sup>52</sup> *Ibid* at [73] and [86].

**C. *Courts are not being inconsistent or biased towards deterrence by imposing deterrent sentences on youths or offenders with mental disorders***

22. The above cases evince the courts' clear willingness to consider rehabilitation in sentencing. Nonetheless, some may contend that recent cases whereby deterrent sentences were imposed on young offenders and offenders with mental disorders evidence the courts' continued inclination towards deterrence and inconsistency in sentencing.
23. For example, in *Ng Jun Xian v Public Prosecutor* ("*Ng Jun Xian*"), the HC overturned the lower court's decision to sentence the 20-year-old offender to RT for sexual assault and attempted rape, substituting this with eight years and six months of imprisonment and six strokes of the cane.<sup>53</sup> In *Chua Siew Peng*, the offender was sentenced to 24 weeks of imprisonment for voluntarily causing hurt to and falsely imprisoning her domestic helper despite being diagnosed with paranoid schizophrenia.<sup>54</sup>
24. However, these cases do not necessarily evidence the courts' inconsistency in sentencing or their prioritisation of deterrence over rehabilitation. The courts have always been transparent about how cases of young offenders or offenders with mental disorders committing severe offences engage both deterrence and rehabilitation as sentencing considerations,<sup>55</sup> and how rehabilitation cannot always remain the predominant consideration. In *Lim Ghim Peow v Public Prosecutor*,<sup>56</sup> the court highlighted that whilst deterrence "may be given considerably less weight" for an offender with a mental disorder, if the disorder did not affect his capacity to appreciate the gravity of his criminal conduct, the significance of deterrence would not be greatly diminished.<sup>57</sup> Similarly, in *Public Prosecutor v GCB (A Minor)*, the court emphasised that whilst the Youth Court focused primarily on rehabilitative sentencing for youths, this could not mean a less severe penalty would always be chosen, as though every

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<sup>53</sup> *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933.

<sup>54</sup> *Chua Siew Peng*, *supra* n 20 at [139].

<sup>55</sup> See for example the cases of *Zulkifli*, *Public Prosecutor v ASR* and *Chua Siew Peng* which have been previously discussed.

<sup>56</sup> *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287.

<sup>57</sup> *Ibid* at [26] – [28].



juvenile would be entitled to it by virtue of his youthfulness.<sup>58</sup>

25. Further, the cases of *Ng Jun Xian* and *Chua Siew Peng* illustrate that compelling facts are needed to justify deterrence displacing the prima facie focus on rehabilitation in such cases. In *Ng Jun Xian*, the offence was premeditated, violent and prolonged.<sup>59</sup> The offender had convinced the victim to enter a hotel room with him and sexually assaulted and attempted to rape her despite her persistent struggle.<sup>60</sup> Furthermore, he was clearly unremorseful as he committed another offence on bail two weeks later and insinuated that the victim was a woman of loose morals at trial.<sup>61</sup> Lastly, his multiple criminal antecedents raised further doubts about his suitability for reform.<sup>62</sup>
26. Meanwhile, in *Chua Siew Peng*, the offender had been diagnosed with schizophrenia many years prior to the offences and seldom experienced relapses at the time of the offences. There had been no causal connection between her mental disorder and the offences.<sup>63</sup> Rather, the offender had emotionally and physically abused a vulnerable domestic worker over a prolonged period with full awareness of the harm she was causing, thus justifying a deterrent sentence.<sup>64</sup>

#### **IV. Conclusion**

27. In conclusion, whilst the courts do clearly favour deterrence over judicial mercy in sentencing, far from favouring deterrence over rehabilitation, the courts have recently reaffirmed their inclination towards rehabilitative sentencing for youth offenders and offenders with mental disorders.
28. Whilst deterrent sentences have sometimes been given to such offenders as well, this does not necessarily evidence inconsistent sentencing or a disproportionate focus on deterrence. In Justice Choo's words, whilst some offenders clearly deserve second

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<sup>58</sup> *Public Prosecutor v GCB (A Minor)* [2019] SGYC 1 at [3] – [4].

<sup>59</sup> *Ng Jun Xian*, *supra* n 53 at [42] and [68].

<sup>60</sup> *Ibid* at [10] – [12].

<sup>61</sup> *Ibid* at [49] – [52].

<sup>62</sup> *Ibid* at [50] – [51].

<sup>63</sup> *Supra* n 20 at [99].

<sup>64</sup> *Ibid* at [127] – [129].

chances, for most, the debate on whether they are deserving is endless.<sup>65</sup> Youth and mental disorders do not always mean rehabilitation should be prioritised in the same way that severe offences do not always warrant deterrent sentences.<sup>66</sup>

29. Ultimately, the courts must consider both the characteristics of the offence and offender and remain flexible, without simply defaulting to either deterrence or rehabilitation in any case. Whilst not every recent judgment has been (or can be) perfect, they have nonetheless demonstrated the courts' attempts at and their relative success in striking a balance between the two objectives.

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<sup>65</sup> *Re Monisha Devaraj and other matters* [2022] SGHC 93 at [1].

<sup>66</sup> See for example *Zulkifli, Public Prosecutor v ASR* and *KPY* which have been previously discussed.