Sentencing Conference 2017

Closing Address by Presiding Judge of the State Courts,

Justice See Kee Oon

27 October 2017

Distinguished speakers and guests, ladies and gentlemen

1. I will briefly summarise some key points which have been raised over the course of the last 2 days. I wish to begin by expressing my gratitude to The Right Hon Sir Geoffrey Vos, who shared with us his perspective on open justice. In his special lecture, he provided a timely reminder that justice must not only be done, but also seen to be done in all cases. Like the courts in England and Wales, we in Singapore have contemplated how to leverage technology in looking to take the delivery of various court services online. Sir Geoffrey provides a salutary note of caution, reminding us to carefully ponder the implications of over-reliance on technology and the real prospect of generating unintended consequences which may potentially undermine confidence in the administration of justice.

2. There has been much discussion centered on the themes of Rehabilitation and Reintegration. In a recent High Court decision, Chief Justice Sundaresh Menon observed that the "rehabilitative rationale for sentencing is to reform or alter the values of the offender such that he or she no longer desires to commit criminal acts".[1] The law on rehabilitative sentencing in Singapore has come a long way

[1] *Stansilas Fabian Kester v Public Prosecutor* [2017] SGHC 185 at [101].

over the last seven decades, with rehabilitative sentencing options developing in tandem with changes in Singapore's post-war socio-economic environment. As we reflect on the discussions on the theme of rehabilitation, we would do well to bear in mind the Chief Justice's exhortation to continue adopting a responsive and sensitive approach to sentencing that not only supports national development, addresses emerging threats but also recognises the value and potential for contribution of each member of our community.

3. At the first plenary session yesterday, we heard from Professors Arie Freiberg and David Wexler about international developments in rehabilitative sentencing jurisprudence and practice. Ideas such as restorative justice, therapeutic jurisprudence and solutions-focussed adjudication have gained traction for some time in jurisdictions such as Australia and the United States. While the rehabilitative sentencing approaches of various jurisdictions may differ, the commonality amongst the jurisdictions appears to be, in the words of Professor Freiberg, an understanding that rehabilitation is not a panacea to prevention of re-offending. Indeed, as the Chief Justice emphasised in his keynote address, rehabilitation is "neither singular nor unyielding". Rehabilitation must and does give way to considerations of deterrence or retribution where the circumstances warrant it, particularly in the case of heinous offences.

4. Where rehabilitation is the overriding consideration, the court nevertheless has to calibrate the sentence carefully, drawing from the available sentencing options. In Session 2, we heard discussions relating to the use of probation and community sentences. Various

approaches are targeted at rehabilitating young offenders. In particular, the deferred sentencing options under the Court Pre-sentence Protocol allow for this. This session has also illustrated the interplay between the theme of “Rehabilitation” and “Review” of the court’s role in ensuring justice and consistency in sentencing. Post-sentence judicial monitoring by the Progress Accountability Court hopes to spur, steer and support change among offenders facing particular issues, such as substance abuse, or mental disabilities. The court adopts a more nuanced problem-solving approach, departing from its traditional role of acting as a neutral adjudicator, yet aided by submissions from parties in what may be a less adversarial process that focuses not only on the offence but on the offender as well.

5. We have also heard from our speakers this morning that in sentencing mentally-ill offenders, demonstrating a causal link between mental disorders and the commission of offences is seldom a straightforward task. If the mental disorder in question had not caused or contributed significantly to the offending conduct, there would be little reason to accord mitigatory weight to the condition of the offender. That said, if it could be shown that an offender might suffer disproportionately in custody by virtue of his mental condition, we recognise that the sentence for that offender ought to be attenuated. We have also heard views of speakers, especially those from the criminal Bar, welcoming the proposed amendments to the Criminal Procedure Code for CBS, and mandatory treatment orders in particular, to be enhanced and made available for consideration in

respect of a larger range of offences.

6. In his keynote address this morning, DAG Hri Kumar Nair SC emphasised that the prosecutor's role as the guardian of the public interest extends to presenting the necessary submissions and evidence before a sentencing court relevant to the issue of what ought to be a fair and just sentence. These include information pertaining to the legislative intent and policies underlying offences and highlighting larger societal objectives that influence sentencing calibration, so that appropriate outcomes can be achieved in the form of sentences that accord with the public interest.

7. I pause here to reiterate a closely related point, which I had mentioned in my introductory remarks yesterday. The court's imposition of fair and just sentences that serve the public interest requires that parties present all the relevant information and evidence before it. In Session 5, we heard speakers explain how tools such as the Sentencing Information Repository ("SIR") assist not only the courts, but also the prosecution and the defence in research and preparation for sentencing submissions. The SIR will, in line with the conference theme, be continuously "reviewed" and enhanced.

8. I would also observe that much as the courts constantly do their best to arrive at the "correct sentence", variability is probably inevitable simply because sentencing itself, while not rocket science, can be a highly-involved and complex exercise. On a personal level, I do agree with the views of some of the speakers, who are conscious that there are so many variables affecting a sentencing outcome. The

reality is that these variables differ over time. The legislative context and prevailing sentencing policy may have changed over time as well. Thus a sentence I might have imposed in 1992 as a young magistrate for a particular charge might well not be the same as what I may impose today.

9. Last but not least, we have heard various speakers talk about the range of initiatives for aftercare and support of offenders to prevent recidivism. I am also heartened to see statistics presented by the Singapore Prisons Service which demonstrate reduced recidivism rates and a lower prison population. We just heard from Mr Benny Se Teo, who shared his perspective on reintegration. His positive testimonial will no doubt encourage other ex-offenders and I am confident that there are many others who have and will benefit like him from the available reintegration programmes.

10. Mr Prem Kumar drew your attention earlier to the backdrop you see behind me. When I first set eyes on the Conference backdrop, I immediately noticed that the panel on the far side was left blank. As I heard the presentations over the course of the last 2 days, especially the final session on “Reintegration” this afternoon, a possible reason began to come to me. The panel symbolises a clean slate. It represents the hope ahead – that there is life anew after sentencing and punishment, that one’s past does not have to and ought not define one’s future.

11. An effective criminal justice system emphasises the certainty of enforcement and punishment, but it must also not lose sight of the

critical need to ensure that there is certainty of hope for ex-offenders to have a fresh start. This is galvanised by the ideal that we can create a justice system that recognizes that sentencing must always take into account the public interest, while placing due emphasis on the circumstances of the offence as well as those of the offender in appropriate measure.

12. For offenders who have been incarcerated, there must be hope upon release. The support of the entire community is essential for successful rehabilitation and reintegration efforts. The invaluable assistance of a network of community organisations that support ex-offenders and their families throughout the incarceration process makes social reintegration a realizable goal. However, the work of community organisations is not sufficient in and of itself. Acceptance of responsibility on the part of the ex-offender, and the love and support of family, friends, and society's acceptance of the ex-offender are just as crucial to his reintegration.

13. On this positive note of hope and redemption, it is time for me to bring this Conference to a close. I wish to convey my heartfelt appreciation to the State Courts' organising committee and the SAL team, for their tireless efforts and their meticulous attention to detail in the organisation of this Conference. I am deeply grateful to all our distinguished speakers and panelists who kindly accepted our invitation to speak and share their views. I hope that the ideas generated will continue to resonate even after the close of this Conference. Please join me in showing our appreciation to our speakers and panelists as well as our moderators once again.

14. On behalf of the State Courts of Singapore and the Singapore Academy of Law, thank you very much for your support and participation in this year's sentencing conference and enriching the discussion. To our speakers and guests who have joined us from beyond Singapore's shores, I wish you a safe journey home. I wish everyone a pleasant weekend ahead.