Sentencing Conference 2017

26 – 27 October 2017

Keynote Address by Chief Justice Sundaresh Menon[*]

Introduction

1 This conference has been organised around the themes of rehabilitation, reintegration and review, being themes that have assumed prominence in local sentencing discourse over the past few decades. There are perhaps two main reasons for this. First, there is growing recognition and acceptance of the notion that rehabilitation is ultimately an especially effective means of crime prevention. By identifying and tackling some of the causes of criminality, the rehabilitative approach to sentencing endeavours to address criminal behaviour at its roots and aims to transform maladjusted individuals into contributing members of society. Second, the effectiveness of rehabilitative measures has been enhanced by the breadth and increasing sophistication of sentencing options available to the courts. This has allowed rehabilitation to become a viable sentencing objective for a larger number of offenders in relation to a larger number of offences.

[*] I am deeply grateful to my Law Clerk, Elton Tan, for his considerable assistance in the research and preparation of this Keynote Address and for his valuable contributions to the ideas which are contained here.

2 I will begin by tracing the origins of rehabilitative justice in Singapore. This is useful because it reveals how our thinking about rehabilitation as a core sentencing consideration has matured and sharpened over the course of the past 70 years. This also gives us a sense of the direction in which it should continue to develop. I will then explore the continuing importance of rehabilitation as a key sentencing objective, focusing in particular on two classes of persons – young offenders and offenders with mental disorders – and explain how the courts have used the available sentencing options to facilitate their rehabilitation. I will also consider some recent developments in sentencing, which have begun to change the role of our sentencing courts, before closing with some observations on the importance of effectively reintegrating ex-offenders into society if we are really going to reap the benefits of this focus on rehabilitation.

The development of rehabilitative justice in Singapore

3 In many ways, the development of rehabilitative justice in Singapore closely tracks the modernisation of our society following the end of the Second World War. As we strived to meet the various economic, social and security-related challenges that confronted us in the post-war era, our sentencing philosophies also evolved. I suggest that the history of rehabilitative sentencing over the past 70 years can be divided into three broad stages. I begin in the late 1940s, after the British had

regained control of Singapore and we became an independent Crown Colony with our own Executive and Legislative Councils. I then move to the 1960s, when we faced a surge of crime with the rise of secret societies and gangs; and finally to the 1990s and the early years of this century, a period marked by rapid legislative reform to promote rehabilitative sentencing in Singapore.

The post-war era: birth of rehabilitative sentencing

4 In 1949, the First Legislative Council of Singapore enacted the Children and Young Persons Ordinance.[1] Following the social dislocation brought about by the Second World War, the Council perceived the need to provide a rehabilitative service for children and young persons who, having been exposed to various forms of physical, social and emotional deprivation during the war, were on the cusp of delinquency and crime.[2] The Council recognised that probation had a rehabilitative dimension and was "a more progressive method of dealing with juvenile delinquents", but also saw that it was of *economic* utility. Probation provided "a direct saving to Government" by "keeping persons in their former employment and thereby making them contribute to the economic life of the country."[3] It was evident

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[1] Ordinance No. 18 of 1949, which is in its present version the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

[2] J.K. Canagarayar, "Probation in Singapore" (1988) 30 Mal. Law Rev. 104 ("*Probation in Singapore*") at p 106.

[3] *Proceedings of the First Legislative Council, Colony of Singapore*, 2nd Session, 1949 at p B93.

that the Council's attention was at least partly on the need to reboot Singapore's economy in the wake of the war and to grow our workforce.

5 Probation did not extend to adults,[4] until the enactment of the Probation of Offenders Ordinance in 1951.[5] The Legislative Council recognised that a significant percentage of offenders were being sent to prison for short durations, which were of little reformative value, and concluded that probation would be preferable where neither the nature of the offence nor the interests of the community demanded imprisonment.[6] At this point in our history, probation was somewhat crude in conception, seen principally as a substitute for short prison sentences for minor offences.[7] Even so, its introduction signalled a shift away from confinement and the deprivation of liberty as the conventional response of the criminal justice system to offending behaviour.

6 In 1956, reformative training for offenders between the ages of 16 and 21 was introduced. This was modelled on the "Borstal" system in the UK, which was

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[4] *Probation in Singapore* at p 105.

[5] Ordinance No. 27 of 1951 ("Probation of Offenders Ordinance"), which in its present version is the Probation of Offenders Act (Cap 252, 1985 Rev Ed).

[6] *Proceedings of the Second Legislative Council: Colony of Singapore,* First Session (1951) at pp B126–127.

[7] *Probation in Singapore* at p 106.

designed to provide adolescent offenders developing persistently delinquent tendencies with the social, vocational or educational training required in order to break out of the cycle of offending behaviour.[8] This was an important move towards equipping young offenders with the requisite skills to afford them a chance at a more productive life rather than just to punish them.

The late 1950s–1980s: urgency of reducing crime

7 In the late 1950s, Singapore faced rising crime rates with the proliferation of secret societies and gangsters who organised and ran illegal activities such as gambling, smuggling, vice and extortion rackets. Violence spread in the community with gang fights and the intimidation of the public for protection money. The Chief Secretary, Mr E. B. David, remarked that this phenomenon reflected the serious social and economic problems caused by the substantial increase in Singapore's post-war population, and that the causes of such delinquency could only be addressed through the gradual improvement of socio-economic conditions and education. Although the Government was working on these issues, it also recognised that "in the meantime the immediate need [was] to preserve the peace

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[8] D A Thomas, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at p 262. The Chief Secretary, Mr W A C Goode, explained that the ages between 16 and 21 was a period when "the majority [of offenders] are likely to respond to expert efforts to reclaim them from crime and to prevent them from becoming criminals": *Singapore Parliamentary Debates, Official Report* (5 December 1956) vol 2 at col 1069.

of the Colony and to protect the law-abiding public from the criminal activities of these gangsters”.[9]

8 This had been the reason for the introduction of corrective training and preventive detention in 1954.[10] Over the course of the next three decades, the maximum periods of corrective training and preventive detention were progressively increased by Parliament. The provisions were also amended to *require* the court to pass such sentences if satisfied that this was expedient, with a view to reformation and prevention of crime, unless it had “special reasons” for not doing so. The increase in the maximum periods of sentencing was to allow the courts to keep persistent or habitual offenders in custody for longer periods. It was thought that these deterrent penalties would help curb the rising crime rates.[11]

The 1990s–2000s: renewal of rehabilitative sentencing

9 With the improving crime situation in the 1980s, a shift in legislative policy toward rehabilitation and reintegration could be discerned. In 1989, the minimum

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[9] *Singapore Legislative Assembly Debates, Official Report* (23 April 1958) vol 6 at col 117.

[10] Criminal Justice (Temporary Provisions) Ordinance 1954 (No 22 of 1954).

[11] *Singapore Parliamentary Debates, Official Report* (26 July 1984) vol 44 at col 1897); *Sim Yeow Kee v Public Prosecutor and another appeal* [2016] 5 SLR 936 at [33].

period of probation was reduced from one year to six months. Parliament saw that young offenders in particular, who came from relatively stable homes and had good school or employment records, would benefit from a shorter and more concentrated period of rehabilitation. This would also expedite the process of their reintegration into the mainstream of society.[12] This was an early recognition of the importance of reintegration, a theme I shall return to at the end of my address.

10 The pace of legislative change in this area accelerated in the early 2000s. On 1 June 2006, we established the Community Courts. These adopt a problem-solving approach to help a variety of offenders, including youthful offenders and those with mental disabilities or addiction problems. A Community Court Judge may involve the families of offenders, victims and defence counsel in Community Court Conferences, which aim to identify the main causes that underlie repeat offending behaviour, explore appropriate treatment plans where the offending behaviour has a medical connection, and facilitate coordination with relevant agencies to help address the underlying issues.[13]

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[12] The Minister for Community Development Dr Seet Ai Mee emphasised that the statutory maximum of 36 months' probation would not be changed so that offenders who were unsuitable for shorter periods of probation could be supervised over longer periods of time: *Singapore Parliamentary Debates, Official Report* (26 January 1989) vol 52 at col 580–581.

[13] Keynote address by CJ Chan Sek Keong, "Justice @ the Subordinate Courts: The new phases of justice", at the 15th Subordinate Courts Workplan 2006/2007.

11 In 2010, community sentences were introduced as part of a raft of amendments to the Criminal Procedure Code. This significantly enhanced the range of sentencing options and provided the courts with a number of targeted and calibrated methods to promote rehabilitation. In broad terms, there are five types of community sentences. **Mandatory treatment orders** are directed at treating psychiatric conditions that contribute to criminal behaviour. **Community *work* orders** seek to promote a sense of responsibility in the offender for the harm that he has caused by committing the offence.[14] These are modelled after "corrective work orders", which were introduced in 1992 to deter littering by engendering a sense of shame in the offender tasked to perform corrective work.[15] While there is likewise a clear deterrent element to community work orders, their function is also educational in nature. The court is required to explain to the offender the purpose of the order, as well as the consequences that may follow upon non-compliance.[16] Then there are **community *service* orders**, which promote reformation by affording the offender the opportunity to make amends by providing general

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[14] Section 344(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC").

[15] *Singapore Parliamentary Debates*, *Official Report* (14 September 1992) vol 60 at cols 203–205.

[16] Section 344(8) of the CPC.

cleaning, repair and care services to the community.[17] Next, there are **short detention orders**, which contemplate imprisonment for a period not exceeding 14 days.[18] These carry both a punitive and a deterrent element[19] and are useful where the court finds that although the custodial threshold has been crossed due to the nature of the offence, the offender is nonetheless suitable for immediate reintegration into society.[20] Finally, **day reporting orders** facilitate close supervision of the offender by requiring him to report to a centre at designated times, with electronic monitoring where necessary.[21] Crucially, when a community sentence is imposed on an offender, the record of his conviction is spent upon completion of the community sentence.[22]

12 When introducing the community sentencing regime, the Minister for Law Mr K Shanmugam explained that community sentences offer flexibility and enable the courts to harness the resources of the community.[23] They also avoid having to

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17 Section 346(1) and the Fifth Schedule of the CPC.

18 Section 348(1) of the CPC.

19 *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 ("*Sim Wen Yi Ernest*") at [44].

20 *Public Prosecutor v Gan Boon Kheng* [2016] SGDC 162 at [22] (cited with approval in *Sim Wen Yi Ernest* at [39]).

21 Sections 341(4) and 342 of the CPC.

22 Section 7DA of the Registration of Criminals Act (Cap 268, 1985 Rev Ed).

23 *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422.

displace the offender from his family, employment and society, thus minimising the need for post-sentence reintegration.[24] But he also emphasised that community sentences are ultimately punitive and the avoidance of moral stigmatisation is not their primary objective. Thus, where community *work* orders are imposed, an element of shaming might feature as an intended aspect of the punishment. In this way, the punitive and the rehabilitative endeavours can and sometimes do come together in the community sentence regime.

13 More recently, the Prisons Act was amended in 2014[25] to establish the Conditional Remission System and the Mandatory Aftercare Scheme. Prisoners who conduct themselves appropriately while in prison can expect a remission of up to a third of the duration of their original sentence. This encourages good behaviour during the period of incarceration; but the salutary effects of remission may not persist upon release. To address this, the Conditional Remission System subjects early release to certain conditions. The aim is to incentivise the offender to work at his successful reintegration into society. If an offender commits an offence in breach of the conditions, while the remission order is in effect and is sentenced to

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[24] *Singapore Parliamentary Debates, Official Report* (19 May 2010) vol 87 at col 568.

[25] Prisons (Amendment) Act 2014 (Act 1 of 2014).

imprisonment, corrective training, reformative training or preventive detention, he will not only be liable for the fresh offence but the sentence may also be enhanced on account of the breach.[26]

14 The Conditional Remission System is complemented by the Mandatory Aftercare Scheme which targets ex-offenders who are at greater risk of re-offending and require more support in reintegration.[27] The Scheme is a structured aftercare regime that provides enhanced community support, counselling and case management, as well as tighter supervision. It lasts up to two years and comprises three phases: a halfway house stay, home supervision and community reintegration. These phases reflect a graduated journey towards reintegration. Importantly, the scheme is customised for each offender following an individualised assessment by the Prisons Service of such factors as the nature of the offence committed, any criminal antecedents, the progress made in prison, the risk of re-offending and the presence of family support.[28]

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[26] The maximum length of the possible enhancement is the remaining period of remission at the time he committed the fresh offence: s 50T(1) of the Prisons Act (Cap 247, 2000 Rev Ed). The longer the former inmate remains crime-free after his release, the shorter will be his potential enhancement of his sentence should he re-offend: *Singapore Parliamentary Debates, Official Report* (20 January 2014) vol 91.

[27] Currently, the target groups of ex-offenders who may be placed on the Mandatory Aftercare Scheme upon release are drug offenders, property offenders with drug antecedents, persons who have committed serious crimes, and inmates with sentences in excess of 15 years or who have been sentenced to life imprisonment but have been released.

[28] *Singapore Parliamentary Debates, Official Report* (20 January 2014) vol 91.

A summary: rehabilitative justice from past to present

15 It will be evident from this brief review that the progress we have made in the field of rehabilitative justice over the last seven decades has coincided with important changes in our country. This should not be surprising. Developments in criminal law and sentencing do not take place in a vacuum. They are important policy responses to the political, social and economic state of a country and the challenges it faces. Post-war Singapore was a very different society from what it is today. When the country grappled with serious crimes such as gang fights,[29] kidnapping for ransom,[30] crimes committed by secret societies[31] and rampant drug trafficking,[32] the focus was quite understandably on crime control through deterrence and incapacitation. Singapore has since become one of the safest cities in the world.[33] This has been accompanied by the refinement of our sentencing approach, bolstered by legislative innovations aimed at putting rehabilitative principles into practice. Our courts now have a wider range of tools to afford an

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[29] *Singapore Parliamentary Debates, Official Report* (23 April 1958) vol 6 col 134.

[30] *Singapore Parliamentary Debates, Official Report* (24 May 1961) vol 14 col 1505.

[31] *Singapore Parliamentary Debates, Official Report* (2 March 1960) vol 12 cols 401–404.

[32] *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 col 1381.

[33] https://www.mfa.gov.sg/content/mfa/overseasmission/geneva/press_statements_speeches/2015/201501/press_20150130.html.

offender both the opportunity and the support to achieve his successful rehabilitation and reintegration into the community. As we move further into the 21st century, we must continue to adopt a responsive and sensitive approach to sentencing that supports our national development, addresses emerging threats, and recognises the value and potential for contribution of each member of our community.

Toward a measured pursuit of rehabilitative justice

16 In that light, let me turn to the second part of my address. While we now have an array of rehabilitative sentencing options at our disposal, the question that arises is how these can be best deployed to ensure more optimal outcomes for society. This in turn raises a number of questions: why is rehabilitative justice important? Under what circumstances should it assume primacy in the court's sentencing analysis? And when should it yield to other sentencing considerations?

The rehabilitative rationale

17 As I mentioned earlier, our courts have long recognised that the true purpose of rehabilitation is the prevention of crime.[34] But when, and in respect of whom, is

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[34] See, for instance, *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 at [29]–[30]. Professor Andrew Ashworth has also observed that "[l]ike deterrence and incapacitation, the rehabilitative rationale

rehabilitation an appropriate and achievable means to realise this goal? The jurisprudence of our courts suggests that rehabilitation is particularly important when dealing with young offenders and those with mental disorders. If we dig a little deeper, I suggest that there are at least four reasons why this is so.

18 I begin with young offenders, in respect of many of whom it may first be said that they lack developed powers of reasoning and may therefore be unable to fully appreciate the consequences of their actions. Studies on adolescent behaviour and the neural changes associated with this phase of life inform us that adolescents have a heightened propensity to engage in risky behaviour with negative consequences, such as substance abuse and inflicting harm on others. This results from an imbalance between the maturity of brain systems that are critical to emotional and incentive-based behaviour on the one hand, and those that mediate cognition and impulse control, on the other.[35] In several important decisions concerning juvenile offenders over the past two decades, the Supreme Court of the

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for sentencing … seeks to justify compulsory measures as a means of achieving the *prevention of crime*, the distinctive method involving the rehabilitation of the offender": see Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 6th Ed, 2015) ("*Sentencing and Criminal Justice*") at p 91.

[35] Leah H. Somerville, Rebecca M. Jones and B.J. Casey, "A time of change: Behavioral and neural correlates of adolescent sensitivity to appetitive and aversive environmental cues", Brain Cogn 2010 February; 72(1); 124–133. Neural imaging too supports the theory that adolescents show enhanced sensitivity to reward cues, leading to real-life risk-taking tendencies: Leah H. Somerville and B.J. Casey, "Developmental neurobiology of cognitive control and motivational systems", Curr Opin Neurobiol. 2010 April; 20(2); 236–241.

United States has relied on sociological and scientific studies. In *Roper v Simmons*,[36] the Court held that the death penalty should not be imposed on offenders below the age of 18. Justice Anthony Kennedy cited literature[37] suggesting that juveniles have less control over their environment and therefore lack the freedom that adults have to extricate themselves from a criminogenic setting. In *Graham v Florida*,[38] where the Supreme Court held that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offences, Justice Kennedy noted that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. And more recently, in *Miller v Alabama,*[39] where the Supreme Court held that mandatory life sentences without the possibility of parole for juvenile offenders were unconstitutional, Justice Elena Kagan observed that the scientific and sociological evidence supporting the conclusions in *Roper* and *Graham* had become even stronger in demonstrating that adolescent brains are not yet fully mature in regions and systems related to impulse control, forward planning and risk avoidance.

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[36] 543 U.S. 551 (2005)

[37] Laurence Steinberg and Elizabeth S. Scott, "Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty", American Psychologist, 58(12), 1009–1018.

[38] 560 U.S. 48 (2010)

[39] 567 U.S. 460 (2012)

19 Young offenders who are still developing their skills and powers of decision-making should, for this reason, be viewed as being *less culpable* than offenders able to reason with the full capacity and maturity that comes with adulthood. Professor Lucia Zedner, Professor of Criminal Justice at Oxford University, observes that offenders are typically assumed to be rational moral agents who can, on this basis, *justly* be held responsible and accountable for their wrongdoing. But the harm, pain or distress which an adult might be expected to recognise as the likely consequences to others of a criminal act might not be quite so apparent to a young offender. Recognising the relative lack of culpability of young offenders and sentencing them on that basis is therefore not only honest, but is more likely to promote just outcomes.[40]

20 Second, the prospects of effective rehabilitation are likely to be enhanced when dealing with young offenders. Our Court of Appeal has observed that there

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[40] Lucia Zedner, "Sentencing Young Offenders" in *Fundamentals of Sentencing Theory* (Andrew Ashworth and Martin Wasik eds) (Clarendon Press Oxford, 1998) ch 7 ("Sentencing Young Offenders") at pp 168 and 174. Professor Andreas von Hirsch, Emeritus Honorary Professor of Penal Theory and Penal Law at Cambridge University, has likewise argued that the diminished culpability of young offenders warrants a different sentencing approach because the state is not justified in expecting children to behave like adults. The state's primary responsibility toward young offenders is to reinforce institutions that should provide support to them: *Principled Sentencing: Readings on Theory and Policy* (Andreas von Hirsch, Andrew Ashworth and Julian Roberts eds) (Oxford University Press, 3rd Ed) at pp 323–329.

are better chances of reforming young offenders who are still in their formative years into law-abiding adults.[41] Third, not only are rehabilitative sentences likely to prove more effective in reforming such offenders, placing them in the traditional prison environment is likely to have the *opposite* effect. Professor Zedner notes the increasing recognition that custodial institutions can prove to be fertile sources of contamination exposing young offenders to the adverse moral influence and expertise of older offenders who are likely to be more recalcitrant and refractory than themselves.[42] The Court of Appeal has likewise observed that the prison environment may have a corrupting influence on young offenders who are more impressionable and susceptible to bad influence than older offenders.[43]

21 Finally, society has a tremendous interest in rehabilitating young offenders. Their youth imparts not only the *capacity* for change but also the immense potential *benefit* of many subsequent years of worthwhile contributions to society. And it is surely the mark of a progressive and caring society that it does not abandon those who have fallen behind but actively nurtures them into morally responsible individuals. Let me give just two examples of individuals who have put their criminal

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41 *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 ("*Mok*") at [21].

42 "Sentencing Young Offenders" at p 168.

43 *Mok* at [21].

past behind them and gone on to make substantial contributions to society. Benny Se Teo struggled with drug addiction in his adolescence and spent time in prison as well as six years in a halfway house. Upon his release, he had difficulty finding employment and then decided to open his own restaurant. He persisted through initial failures and eventually established a successful restaurant chain. Mr Teo makes it a point to offer ex-offenders like himself employment at his restaurants, providing them mentorship and training.[44] Darren Tan was likewise mired in drug abuse as a teen. He spent two years in a reformative training centre when he was 18 and subsequently spent more than 10 years in prison and received 19 strokes of the cane. Upon his release, Mr Tan became the first student with such a criminal record to read law at the National University of Singapore. He is today a commercial litigator at a local law firm, and in 2016 was named by the Singapore Business Review as one of Singapore's 70 most influential lawyers under 40.[45] Mr Tan overcame significant adversity and is now in a position to contribute both to the profession and to society. These lives demonstrate that we stand to gain immensely from rehabilitating and reintegrating, rather than rejecting, former offenders. If we

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[44] www.channelnewsasia.com/news/singapore/the-govt-should-start-hiring-ex-offenders-themselves-benny-se-te-8236972

[45] www.todayonline.com/singapore/behind-bars/being-called-bar

write off the futures of our ex-offenders on account of their pasts, we stand to lose their potential contributions and that would be a tragic waste.

22 Several of these points also apply to offenders with mental disorders. As a result of their afflictions, these individuals are often incapable of acting as fully rational and responsible moral agents. It is therefore unsurprising that the Court of Appeal has acknowledged that the principle of deterrence may be accorded less weight in cases involving mentally disordered offenders. Particularly in relation to specific deterrence, the court has observed that where an offender's mental disorder has seriously inhibited his ability to make proper choices or appreciate the nature and quality of his actions, it is unlikely that specific deterrence will discourage re-offending.[46] On the contrary, rehabilitation by treatment of the offender's disorder becomes the critical sentencing consideration where the court is satisfied that such treatment can restore his capacity to think and act appropriately. In short, a *causal link* must be shown between the mental disorder and the commission of the offence. Sentencing, after all, is a response of the criminal law to criminal conduct. So it is patently not the place of a criminal court to order compulsory treatment where the disorder does not lie at the root of the criminality. This is reflected in the statutory

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[46] *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287 ("*Lim Ghim Peow*") at [26] and [36]–[37].

framework that empowers the court to impose a mandatory treatment order.[47] Where the offender's mental disorder is unrelated to his offence, it is simply not the role of the sentencing court to direct him to the requisite treatment even if he might need it.

Rehabilitation and other sentencing objectives

23 There can be little doubt that rehabilitative justice is an essential aspect of our criminal justice system. However, it is essential that we place rehabilitation as a sentencing consideration in its proper perspective. It is *one of several* sentencing considerations, which also include general and specific deterrence, prevention and incapacitation, as well as retribution; and as I observed in a recent decision, rehabilitation even in the context of young offenders is "neither singular nor unyielding"; "[t]he focus on rehabilitation can be diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant".[48]

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[47] Under s 339 of the CPC, it is a precondition to the exercise of this power that an appointed psychiatrist has expressed the opinion that (a) the offender is suffering from a psychiatric condition which is susceptible to treatment; (b) he is suitable for the treatment; and (c) his psychiatric condition is one of the contributing factors for his commission of the offence.

[48] *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 ("*Boaz Koh*") at [30].

24 A review of our sentencing jurisprudence over the past decade reveals that this has been repeatedly emphasised. Our courts have preferred a pragmatic and fact-sensitive approach that has regard to both the offence and the offender in determining how much weight to place on rehabilitation. A secondary theme that emerges clearly from the case law is the growing recognition that the available sentencing options are nuanced and multi-dimensional tools that are very often capable of satisfying *several* sentencing objectives at the same time.

Identifying dominant sentencing objectives

25 In developing an appropriate approach to sentencing, it has been suggested that the courts should declare primary rationales for sentencing, particularly in relation to certain classes of offences or offenders.[49] We have in fact done this in several contexts – for instance, in relation to drug offences,[50] drunk driving;[51] offences against vulnerable victims,[52] and offences committed by young persons or mentally-disordered individuals. This helps promote consistency in sentencing approaches. At the same time, it also signals that there is no real philosophical

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[49] See, for instance, *Sentencing and Criminal Justice* at p81 and Council of Europe (1993), *Consistency in Sentencing*, Recommendation R (92) 17, Strasbourg: Council of Europe.

[50] *Alvin Lim*.

[51] *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139; *Stansilas Fabian Kester v Public Prosecutor* [2017] SGHC 185.

[52] *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814.

tension among the sentencing objectives. But it would be wrong to conclude that there is always one dominant or primary consideration at play. In each case, the exercise entails identifying (a) the relevant objectives having regard to the facts pertaining to the offence and the offender and (b) the sentences or combination of sentences that will best meet these objectives.

26 I can demonstrate the point with some examples. In 2015, I heard an appeal involving a young offender who was ordered to undergo probation following the commission of various property offences. While on probation, he committed further offences, including some of vandalism. He was placed on probation for a further period of 30 months for the fresh offences. The question on appeal was whether this was the correct response to the offender's recidivism. In allowing the prosecution's appeal and ordering the offender to undergo reformative training, I explained that while the primary sentencing consideration for youthful offenders will generally be rehabilitation, rehabilitation may yield its primacy in cases where (a) the offence is serious; (b) the harm caused is severe; (c) the offender is shown to be hardened and recalcitrant; or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable.[53]

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[53] *Boaz Koh* at [29]–[30].

The threshold question is whether on the facts presented, rehabilitation retains its primacy in the sentencing matrix. If so, then the court must decide which among the wide range of rehabilitative sentencing options it should impose on the offender.[54] This places due weight on the special relevance of rehabilitative justice in dealing with young offenders; at the same time, it also recognises that this may be displaced if other objectives have assumed primacy.

27 In another appeal[55] that I heard this year, the offender pleaded guilty to the offence of possession of cannabis and was ordered to undergo probation. I allowed the appeal and sentenced the offender to eight months' imprisonment. Aside from the fact that the offender was a 27-year-old man and could not be considered a young offender, the case turned on the long-held view in our law that deterrence is the dominant consideration in the context of drug offences. Save in the most exceptional of circumstances, a custodial term will therefore be imposed. This is justified by the harm that drugs cause both to the individual consumer and to society at large.[56]

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[54] *Boaz Koh* at [34].

[55] *Public Prosecutor v Lim Cheng Ji Alvin* [2017] SGHC 181 (*"Alvin Lim*").

[56] *Alvin Lim* at [17]. Consistent with this, it was noted from reviewing the precedents that probation had been ordered in such cases involving older offenders only in circumstances where they were shown to be suffering from psychiatric or other conditions that were causally connected to the commission of the offence in question: *Alvin Lim* at [7].

28 Similarly, in relation to offenders with psychiatric conditions, the courts have emphasised that rehabilitation is not necessarily the overriding or even the most important sentencing consideration. The Court of Appeal has instead prescribed a fact-sensitive approach to the inquiry, which focuses on the nature and severity of the mental disorder and its causal connection to the offending behaviour. The element of general deterrence may be accorded full weight where the mental disorder is not serious or is not causally related to the commission of the offence, or where the offence is serious. In such circumstances, the retributive and protective principles of sentencing may prevail over the principle of rehabilitation, notwithstanding the offender's mental disorder.[57]

29 In a case heard in 2014, the offender pleaded guilty to a charge of culpable homicide not amounting to murder, after killing his ex-lover by dousing her with petrol and then setting her ablaze. The offender suffered from major depressive disorder at the time of the offence. He was sentenced to 20 years' imprisonment and appealed against the sentence citing the significance of his psychiatric condition. The Court of Appeal dismissed the appeal, applying the principles that I

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[57] *Lim Ghim Peow* at [25], [28] and [39].

have just described. It observed that there was no evidence that the offender lacked the capacity to comprehend his actions or appreciate the wrongfulness of his conduct, despite his mental disorder. Given his impulsive personality trait and violent tendencies, there was also a need for the protection of the public. The Court concluded that the offender's rehabilitation would be best carried out in a structured and correctional environment while serving a long custodial sentence.[58]

30 The upshot of all this is that rehabilitation is *not* a goal to be pursued at all costs, *even if* the offender might be thought to be susceptible to rehabilitative measures. Depending on the facts, the court might conclude that other sentencing objectives ought to assume prominence in the sentencing analysis. This does not mean, however, that rehabilitation is somehow philosophically at odds with deterrence, incapacitation or prevention. Indeed, it may sometimes be thought that these objectives are locked in a struggle for dominance. I think this would be a misconception. I suggest two reasons why this supposed contest is more illusory than real. First, the ultimate goal of all of these sentencing objectives is the protection of the public through the prevention of crime. Deterrence achieves this by disincentivising criminal behaviour; rehabilitation by treating criminal tendencies

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[58] *Lim Ghim Peow* at [52]–[54].

through medicine and education; and incapacitation by separating dangerous and persistent offenders from the community. The primary difference between these principles concern their modality rather than their purpose. Second, the perceived tension between these considerations arises in part from the oft-held but erroneous belief that sentences that pursue a particular sentencing objective may be "lighter" than sentences that support another objective. For instance, an emphasis on rehabilitation is often seen as a prelude to the imposition of a less onerous sentence. But this is not necessarily the case. Thus, an appeal heard in 2008[59] concerned an offender who was convicted of attempting to commit culpable homicide by pushing his ex-girlfriend onto the path of an oncoming train. Although he was suffering from depression at the time, the Court of Appeal enhanced his sentence from one to three years' imprisonment, holding that while rehabilitation was a relevant consideration, there was no suggestion that this could not be accomplished in prison. Hence, placing weight on rehabilitation as a sentencing principle does not necessarily result in a light sentence.[60]

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[59] *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 ("*Kwong Kok Hing*").

[60] *Kwong Kok Hing* at [37]. Similar reasoning was deployed by the High Court in a more recent case involving an offender who, while suffering from voyeurism, took videos that intruded on the modesty of unsuspecting female victims: *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 at [38].

31 I suggest that the better approach is to view the relationship between these sentencing considerations as *mutually reinforcing rationales* for punishment, the relative importance of which may vary depending on the offence and the offender in question. For example, where the offender suffers from a mental disorder of such severity that he is unable to control his behaviour, specific deterrence becomes largely immaterial but rehabilitation and perhaps incapacitation may be important, depending on his susceptibility to treatment.

Sentencing options that pursue multiple sentencing objectives

32 I turn to the second point that I mentioned earlier – that the modern sentencing options available to us allow multiple sentencing objectives to be pursued simultaneously. This means, for instance, that the rehabilitation of the offender need not take place at the expense of deterring him or others from committing similar offences in the future. This too displaces concerns about any tension that might be thought to exist between the different sentencing options.

33 Reformative training provides a useful example. In the appeal that I mentioned earlier, involving the young offender who committed fresh offences while on probation, the question was whether the district judge should have imposed reformative training rather than further probation for the fresh offences. I explained, first, that both probation and reformative training are geared towards the

rehabilitation of the offender; but within this context, reformative training also incorporates a significant element of *deterrence* because, unlike probation, there is a minimum incarceration period of 18 months.[61] The offender undergoes the programme within a structured environment that does not expose him to the potentially unsettling influence of an adult prison environment. It will therefore be the preferred sentencing option in cases involving young offenders for whom a degree of deterrence is also desired.[62] Given that the offender in question reoffended while on probation and demonstrated a pattern of increasingly serious criminal behaviour, I considered that there was a heightened need for deterrence and the appropriate sentence was therefore reformative training rather than probation.[63]

34 Reformative training may also be more appropriate where it is necessary to signal the gravity of certain *types* of offences, even if rehabilitation retains its primacy given the offender's youth. I heard an appeal in 2016 involving an 18-year-old youth who had committed the offence of sexual penetration of a minor. He met a 14-year-old girl at a bar where she had been drinking, carried her to a stairwell

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[61] Section 3(2) of the Criminal Procedure Code (Reformative Training) Regulations 2010 (Act 5 of 2010) (No. S 802).

[62] *Boaz Koh* at [35]–[36] and [38]–[39].

[63] *Boaz Koh* at [59]–[60].

and penetrated her against a wall. The district judge imposed a term of 24 months' probation. I found this to be manifestly inadequate and substituted it with reformative training. One of the key reasons for my decision was the seriousness of the offence, which necessitated signalling to other like-minded youths that the consequences of engaging in such conduct is likely to be a stint of reformative training, if not worse. But while there was a strong public interest in deterring such conduct, it was also important to facilitate the rehabilitation of the young offender. This could be accomplished within the structured environment of reformative training.[64]

35 Community sentences too can support different sentencing objectives. And when they are used in combination with each other, they often provide a nuanced but targeted package of solutions that can effectively promote multiple sentencing objectives. This was relevant in an appeal that I heard in 2015,[65] involving a 17-year-old offender who met three accomplices and set out to look for foreign workers whom they might assault. They came upon the victim who was then set upon by the offender's accomplices. The offender himself had not participated directly in the assault. He pleaded guilty to a charge of voluntarily causing hurt to the foreign

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[64] *Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 at [20]–[21].

[65] *Public Prosecutor v Daryl Lim Jun Liang* (Magistrate's Appeal No 9047/2015).

worker, having acted in furtherance of the common intention of the group. The district judge imposed a combination of community sentences – consisting of a short detention order of 10 days' detention, a community service order of 150 hours of community service and a 12-month day reporting order with electronic monitoring. He thought that this combination of orders represented a good balance of the applicable sentencing considerations.[66]

36 On appeal, I agreed with him, noting that although this was a deplorable act of gratuitous violence, it was significant that the offender had not participated in the acts of violence and the pre-sentencing reports had assessed him as having a low risk of re-offending. The short detention order would expose the offender to the proverbial "clang of the prison gates" and I was satisfied that this would suffice to deter him from any subsequent conduct that would likely result in a much longer stay on the next occasion, should there be one.[67]

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[66] *Public Prosecutor v Daryl Lim Jun Liang* [2015] SGDC 144 at [11].

[67] I only adjusted the sentence by directing the offender's parents to be bonded in a suitable sum to ensure his good behaviour, so that his chances of rehabilitation would be strengthened through firm parental involvement and support. See also *Sim Wen Yi Ernest*, which concerned a 25-year-old individual who purchased airsoft arms from abroad and fired them at passers-by from his residential unit on the second floor. The High Court judge expressed the view that although the offender was above 21, this did not in itself mean that he should be denied the opportunity to be considered for community sentencing. The rehabilitative aim did not automatically recede once an offender reached 21 years of age. Although the offender's actions posed a risk of serious danger to others, rehabilitation remained a key consideration since he was unlikely to re-offend and manifested good prospects for reform. The judge found that a combination of community sentences, in the form of one-week short detention order and a community service order for 150 hours of community service, would best reflect the interplay of sentencing objectives.

37 It might well be the case that no single type of sentence, or even combination of sentencing types, can perfectly satisfy each of the sentencing objectives that are relevant in a given case. But I believe that the options available to us today provide an excellent starting point.

The future of rehabilitative justice in Singapore

38 I earlier mentioned that developments in rehabilitative sentencing have begun to change the role of the sentencing court. This is closely related to the third theme of this Conference – *review* of the court's role in sentencing. Traditionally, the sentencing court's role begins and ends with sentencing. Today, a sentencing court in Singapore may be involved in a case well *before* passing sentence. For this, the court can be assisted in various ways, including expert evaluations and technological tools such as the Sentencing Information and Research Repository. And its responsibilities may extend even *after* sentence is passed. Through judicial monitoring and review, the court becomes an active participant in the offender's rehabilitation. This significantly increases the complexity of the court's role.

Judicial monitoring

39 In 2014, I announced the establishment of the Progress Accountability Court.[68] The Progress Accountability Court works with stakeholder agencies to oversee the progress of selected offenders through progress reviews. For instance, a judge who has placed an offender on probation may order that the offender appear before him after a period of time for a review of his progress. The offender may be accompanied by his family members and by his case officer who reports on his conduct and performance. In this way, the court monitors the offender's progress and reinforces his sense of accountability by encouraging him to stay on the path to reform while reminding him of the repercussions of fresh misconduct.

40 Regular reviews of the offender's progress may also have an important pre-emptive function. An offender's regression into criminality may be signalled in advance by signs of increasing defiance of authority, or a return to substance abuse, or re-entering the company of gangs and peers who have proved to be a bad influence, or breaches of probation conditions. By reviewing the offender's performance at regular intervals, the court is well-placed to detect such regression

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[68] Keynote address at State Courts Workplan 2014, "State Courts: A new chapter for our juiciary".

and try to halt the slide, by calling on supporting agencies to assist, and engaging the family to supervise the offender more closely.

41 Judicial monitoring can take place not only after, but even before sentence is passed. Last year, I announced further initiatives that would be introduced by the State Courts, including the Pre-Sentence Protocol.[69] This is a new sentencing approach aimed at addressing underlying problems commonly faced by individuals who commit certain types of offences. These are generally minor offences such as petty theft, causing of minor hurt, criminal intimidation and public order offences. One of the contributing reasons (often the critical one) underlying the commission of these offences is addiction to alcohol or other substances. If that is not addressed and the offender is simply fined or sent to prison for a short period, there is every likelihood of a recurrence. These offenders often find themselves ensnared in an interminable cycle of recidivism upon release from prison, experiencing ever-increasing sentences that have little deterrent effect because the underlying problem of addiction persists.

[69] Keynote address at State Courts Workplan 2016, “Charting the future together”.

42 For such offenders, rehabilitation is the key to breaking the vicious cycle of crime and punishment. The Pre-Sentence Protocol can play an important part in this process. Under this scheme, the court does not pass sentence immediately but instead directs the offender to undergo treatment, receive counselling or voluntarily participate in residential or structured programmes. The court monitors the offender's compliance with its directions over a period of time. During this period, the Singapore After-Care Association performs a vital role counselling and monitoring the offender's compliance with court directions. Once the pre-sentence period has expired, the offender returns to court and is then sentenced. The court will take into consideration the offender's progress and the efforts made to address his underlying problems before arriving at its decision. Depending on the offender's progress and needs, the court might, for instance, order a conditional discharge requiring that the offender stay crime-free for a period of time. It may also require post-sentence monitoring by the Progress Accountability Court.

43 I digress to clarify a point. In the appeal, which I mentioned earlier, concerning the young offender who had re-offended while on probation, I cautioned against placing undue weight on signs of apparent changed behaviour in the period between apprehension and sentence. That offender had checked himself into a residential programme at a halfway house prior to sentencing. Although the pre-sentencing reports indicated that he was suitable for either probation or reformative

training, the district judge took the unusual course of deferring sentencing so as to get a supplementary probation report assessing the offender's progress at the halfway house. In subsequently ordering that the offender undergo probation involving residential supervision at that halfway house, the district judge was influenced by the favourable report of the offender's behaviour during his pre-sentence residency there. In my judgment, I explained that while the remorse of an offender evidenced by his voluntary pre-sentencing reform could be a relevant factor in sentencing, there might be little utility in adjourning sentencing to ascertain whether there *will* be signs of reform pending the imposition of sentence, since the offender, sensing that he has been given a chance to avoid what will likely be a heavier sentence, would be strongly incentivised to put up a favourable front.[70]

44 Those observations do not apply in the context of the Pre-Sentence Protocol, the purpose of which is not to give offenders the opportunity to demonstrate remorse and capacity for reform as mitigating factors in sentencing. Rather, it is to incentivise offenders who suffer from substance addiction to find solutions to the root causes of their criminality and thereby escape the cycle of release and recidivism.

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[70] *Boaz Koh* at [67].

45 The Pre-Sentence Protocol and the Progress Accountability Court are important new mechanisms for the implementation of rehabilitative justice in Singapore with the involvement of the courts. These measures are rooted in the recognition that rehabilitation through medical, social and familial support is a powerful means of crime prevention.

Suspended sentences and the expansion of the community sentencing regime

46 Earlier this year, the Ministry of Law conducted a public consultation on proposed amendments to the Criminal Procedure Code and the Evidence Act.[71] Amongst the possibilities explored was an expansion of the pool of offenders eligible for the community sentencing regime. For instance, one of the proposed changes is to allow offenders who have committed certain offences that are punishable with up to seven years' imprisonment to receive mandatory treatment orders. This would mark a departure from the existing position, under which

[71] See "Public Consultation on Proposed Amendments to the Criminal Procedure Code and Evidence Act" (https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/public-consultation-on-proposed-amendments-to-the-criminal-proce.html).

mandatory treatment orders cannot be meted out if the offence committed is punishable with a term of imprisonment exceeding three years.[72]

47 The Ministry of Law also proposed empowering the courts to impose a suspended imprisonment sentence together with a community sentence in suitable cases. The suspended imprisonment sentence would automatically take effect upon any non-compliance with the community sentence. The power to suspend a sentence of imprisonment provides a powerful means by which to encourage rehabilitation and reformation.

48 While we await the Ministry's decisions on these matters, it has to be said that the effect of the proposed amendments would be to further increase the availability and effectiveness of community sentences, with the potential to strengthen and expand the existing rehabilitative sentencing options in important ways.

Refocusing on reintegration

49 In closing, I would like to focus on the theme of reintegration, which represents the final and, often, most difficult step in the criminal justice process. It is a theme

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[72] Section 337(1)(*l*) of the CPC.

that I have alluded to throughout the course of my remarks this morning; but I think it is sufficiently important to address it directly, even if only briefly.

50 At the Reintegration Puzzle Conference in 2014, I described the importance of successfully reintegrating ex-offenders into society. I will briefly reiterate two of the points that I made on that occasion. First, both direct and indirect social costs accrue if an ex-offender is not properly reintegrated. In relation to *direct* costs, community safety is compromised if an ex-offender relapses into crime due to a failure to reintegrate. In relation to *indirect* costs, society suffers as a result of lost economic capacity and having to shoulder the burden of providing social services to sustain ex-offenders who are unable or unwilling to support themselves. Second, if we fail to successfully reintegrate former offenders, then we are visiting further punitive measures on them, by casting them aside and excluding them from society. It is in our collective and enlightened self-interest as well as our duty to ensure that the relationship between ex-offenders and the community is rebuilt.

51 The crucial point is that just as rehabilitation and review are important means of crime prevention, reintegration is *equally if not even more* instrumental in this enterprise. If an ex-offender is unable to find his footing in society, whether in terms of finding employment or reconnecting with loved ones, this enhances his chances of slipping back into old patterns of behaviour and association. Studies suggest that

without material, psychological and social support at the time of release, ex-offenders will have a difficult time breaking the cycle of release and re-arrest.[73] Reintegration is a critical aspect of the crime prevention strategy and must be facilitated in a careful and targeted fashion.

52 Because the reintegration of an offender is almost always a prolonged effort extending beyond the offender's contact with the criminal justice system, it is important that supporting agencies and the community at large reach out to bridge the divide. Earlier in this address, I referred to the Singapore After-Care Association, which is a key aftercare agency providing welfare and rehabilitation services for discharged offenders and their families in order to improve their chances of reintegration and so reduce the likelihood of recidivism. The Association also runs an Education Support Programme for ex-offenders keen on furthering their education and operates a drop-in centre to counsel ex-offenders and their families.

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[73] See, for instance, Curt T. Griffiths, Yvon Dandurand and Danielle Murdoch, "The Social Reintegration of Offenders and Crime Prevention", Research Report 2007-2, The International Centre for Criminal Law Reform and Criminal Justice Policy, April 2007. There is a general consensus that in order to prevent recidivism, reintegration programmes must focus on the factors that place offenders at risk, such as learning disabilities, substance abuse, unsupportive families, mental illnesses and so on: see, for instance, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, United Nations Office on Drugs and Crime, Criminal Justice Handbook Series (United Nations, 2012) at p 10.

53 The Association is one of eight community and government organisations that together form the Community Action for the Rehabilitation of Ex-Offenders, or "CARE", Network. Another member of the Network is the Singapore Corporation of Rehabilitative Enterprises, or "SCORE", a statutory board that focuses on enhancing the employability of ex-offenders. SCORE offers training courses that are integrated with work programmes, and its efforts begin at the pre-release period, when it assists inmates to secure jobs even before their release by arranging interviews with suitable employers. The perhaps better-known Yellow Ribbon Project is another member of the CARE Network. The Project engages the community through outreach activities in an effort to generate greater awareness of the importance of giving former offenders second chances. Through its constituent organisations, the CARE Network adopts a multifaceted approach to reintegration. This goes a long way toward reducing the risk of recidivism and its associated social costs, and is to be warmly encouraged and supported.

54 Some of these themes pertaining to the importance of reintegration were illustrated in a recent article in The New York Times,[74] which tells the story of Michelle Jones, a woman who began serving a 50-year term of imprisonment in

[74] Eli Hager, "From Prison to Ph.D.: The Redemption and Rejection of Michelle Jones" *The New York Times* (13 September 2017)

1996, following her conviction for the murder of her 4-year-old son. Ms Jones worked for five years in the law library at Indiana Women's Prison, received her certification as a paralegal, and went on to receive a bachelor's degree in 2004. In 2012, her interest in history was piqued when she researched the origins of the Indiana Women's Prison, which was the first female correctional facility in the United States. She led a team of inmates in the project, reviewing large amounts of material from the Indiana State Archives, and produced a paper that was published in an academic journal and which went on to win the Indiana Historical Society's award for the best research project in 2016.

55 Ms Jones then applied to various universities, including Harvard, to do a PhD. She was reportedly among 18 selected from more than 300 applicants; but, her admission was reversed when concerns were raised within the University that she had downplayed her crime in the admissions process. Ms Jones' sentence was eventually reduced from 50 to 20 years based on her good behaviour and her educational attainments. She was released last month and arrived at New York University on the day after her release, ready to begin her PhD studies.

56 Ms Jones' story raises an important question as to the appropriate attitude that society ought to have in relation to ex-offenders. It provides us with cause for reflection. As a meritocratic society that values ability and the potential for

contribution, it is imperative that we remain open to giving ex-offenders a second chance. That openness should be manifested in a willingness to provide ex-offenders with employment opportunities, to warmly encourage their participation in social groups and events, and to accord them the respect and support that we owe each other as members of the same community.

57 As part of the Children's Day event at Tanah Merah Prison this year, inmates had an open visit during which they were allowed to have physical contact with their loved ones, without the usual glass barrier. The event was part of a family care programme initiated by Focus on the Family Singapore, to help inmates and their families build stronger bonds. The celebration included games, a communal lunch, and talks on expressing affection. This was the first time that some inmates had had any physical contact with their children, who had grown up during their years behind bars. It was by all accounts an emotional event.[75] I think the open visit is a metaphor for the wider effort to remove barriers between ex-offenders and society, which is what reintegration is ultimately about.

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[75] Theresa Tan, "A rare hug from daddy during special visit to prison" *The Straits Times* (8 October 2017)

58 This requires diligence and a sense of purpose on the part of offenders, as well as warmth and a spirit of openness on our part together with effective reintegration programmes. This is hard work with no guarantee of success, but I suggest the rewards are well worth the labour.

Conclusion

59 The Sentencing Conference offers a valuable platform for the sharing of thoughts and ideas on present and future developments in this important area of the law. It has been a privilege for me to address you. I have no doubt that, as with the inaugural Conference in 2014, this year's discussions will be fruitful and illuminating. I thank you all for participating in the Conference and wish you a most rewarding two days ahead.