

INFORMATION PAPER ON SENTENCING IN THE SUBORDINATE COURTS

THE SENTENCING PROCESS

Sentencing takes place after an accused person is convicted. The sentencing process commences with the prosecution informing the court whether the accused has any previous convictions, and if so, the nature of these convictions. The accused is then invited to state whether he disputes these convictions, if any. The accused (or, if he is represented, his counsel) is then given an opportunity to mitigate – i.e., to inform the court of any reasons as to why a lenient sentence should be imposed. In some cases, the prosecution may make a submission on the appropriate sentence to be imposed on the accused. The court will then pass sentence, after giving due consideration to all the factors in the case.

RECOURSE FOR DISSATISFACTION WITH SENTENCE

If the accused person is dissatisfied with the conviction or is of the view that the sentence is manifestly excessive, he or she has the right to appeal to the High Court within 10 days of sentence being passed. Similarly, the prosecution also has the right to appeal against sentence if the Public Prosecutor is of the view that the sentence is manifestly inadequate.

GENERAL OBJECTS OF SENTENCING

Public interest is the "first and foremost consideration" guiding a court in the imposition of sentences. A court seeks to advance this interest by subscribing to 4 main sentencing principles - retribution, deterrence, prevention, and rehabilitation.

The essence of the *retributive principle* is that the offender must pay for what he has done. It follows from this premise that the punishment must reflect and befit the seriousness of the crime.

Deterrence can be categorised into specific deterrence and general deterrence. Specific deterrence is usually appropriate where the crime is premeditated and where the offender is a repeat offender. General deterrence aims at educating and deterring other like-minded members of the general public by making an example of the particular offender, in order to send a strong message to other like-minded persons that such offences will not be tolerated.

Prevention refers to the physical incapacitation of the offender for the protection of the public so that dangerous and persistent offenders are incapable of offending for long periods.

Rehabilitation is the dominant consideration for offenders below 21 years of age. The Honourable the Chief Justice has commented in a High Court decision that "such young

offenders are in their formative years and chances of reforming them into law-abiding adults are better... However, there is no doubt that some young people can be calculating in their offences. Hence the court will need to assess the facts in every case.” Rehabilitation is therefore not the only consideration when it comes to sentencing young offenders.

PUBLIC INTEREST

In Singapore, public interest demands, *inter alia*, a strong emphasis on the maintenance on law and social order. Considerations of prevention and deterrence override that of rehabilitation. The overall sentencing purpose is to reduce crime and to protect the community. Thus, where an offence is prevalent or becoming prevalent, the courts may mete out a stiff sentence to show its disapproval and to deter like-minded offenders. Public interest may also outweigh other mitigating factors such as the fact that the offender is a first offender or the fact that the offender is a youthful offender.

PARITY IN SENTENCING

Parity in sentencing means that where two or more offenders are to be sentenced for participation in the same offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibilities for the offence or their personal circumstances. For example, where, the offenders did not play the same roles in the commission of the crimes and have different degrees of culpability. Similarly, an offender who has no antecedents should receive a lesser sentence than one with previous criminal antecedents. Also, a court may, in appropriate cases, make a distinction in sentence by giving a ‘discount’ to an accused who pleads guilty, relative to the sentence which may be imposed on an accused who elects to claim trial.

As regards sentences imposed in other similar but unconnected cases, while parity of sentencing is an important principle, this principle can only apply if all the circumstances of the previous cases and the present one are identical or at least very similar. Ultimately, the principle that similar sentences must be imposed for similar offences and offenders is subject to the fundamental principle that each case must depend on its own facts.

OTHER SENTENCING CONSIDERATIONS

Other sentencing factors which the Court will consider include (but are not limited to) the following:

- (i) The prescribed minimum (if any) and maximum punishments provided by Parliament. The Court will also consider, in appropriate circumstances, Parliamentary debates on legislative policies where they are relevant.
- (ii) The nature and immediate circumstances of the offence, its impact, prevalence, the degree of the offender’s culpability, against the background of the criminal record of the offender. In determining the seriousness of the offence, any

aggravating or mitigating factors which impinge upon the seriousness will also be taken into account.

- (iii) Sentencing precedents pronounced by the High Court in previous relevant cases as the District and Magistrates' Courts are bound by practice to follow these decisions.
- (iv) Where an offender is convicted of multiple offences, regard will be given to whether the aggregate sentence is just and appropriate to the offender's total criminality.
- (v) To consider an offender's response to previous sentences where he has prior criminal records.

SENTENCING IS NOT AN EXACT SCIENCE

It is often said that sentencing is an art and not an exact science. It is not determined by any mathematical formula, but requires the exercise of sound judicial discretion. It is a complicated judicial process which involves a fine balancing of a myriad of various factors. Invariably, the sentencing judge presiding over the case is in the best position to decide on the appropriate sentence because of his experience, training and impartiality. More importantly, he has full knowledge of all the relevant facts peculiar to the case at hand (including any aggravating or mitigating factors), the prescribed punishments, policy considerations, sentencing practice and precedents.

The Honourable the Chief Justice has stated that "the regime of sentencing is a matter of law which involves a hotchpotch of such varied and manifold factors that no two cases can ever be completely identical in this regard. Whilst past cases are no doubt helpful and sometimes serve as critical guidelines for the sentencing court, that is also all that they are, i.e., mere guidelines only. This is especially so with regard to the unreported cases, in which the detailed facts and circumstances are hardly, if ever, disclosed with sufficient clarity to enable any intelligent comparison to be made. At the end of the day, every case which comes before the courts must be looked at on its own facts, each particular accused in his own circumstances, and counsel be kept constantly and keenly apprised of the fact that it is just not possible to categorise cases based simply on mere numerals and decimal points."

More information can be found in *Sentencing Practice in the Subordinate Courts* (Second Edition, 2003), part of the Practitioner's Library series of publications.