

Understanding Legal Processes: Sentencing in Singapore

Introduction

Sentencing is an important element in the court process. In deciding the appropriate punishment for an offence, the Court takes into consideration various factors pertaining to the offence as well as the offender. To ensure that the offender receives a just and fair punishment, the Court is assisted by the Prosecution and the Defence in arriving at the appropriate sentence after the offender has pleaded guilty to a charge or has been found guilty by the Court at the end of a trial.

The four principles in guiding this sentencing process are as follows:

1. Retribution: The offender should be suitably punished according to his culpability and the seriousness of the crime committed.
2. Deterrence: This can be further subdivided into *general deterrence* and *specific deterrence*. General deterrence aims to discourage others from engaging in similar behaviour through the sentence meted out on a particular offender. Specific deterrence, on the other hand, targets the offender himself, and seeks to discourage him from re-offending. This is particularly relevant when the offender is a repeat offender.
3. Prevention: This refers to the physical incapacitation of the offender, *i.e.* he is locked away so that he cannot cause any further harm.
4. Rehabilitation: In choosing the appropriate punishment to be meted out to the offender, the Court will consider whether the offender is capable of reform and which punishment regime is most suited to help reform him.

The Sentencing Process

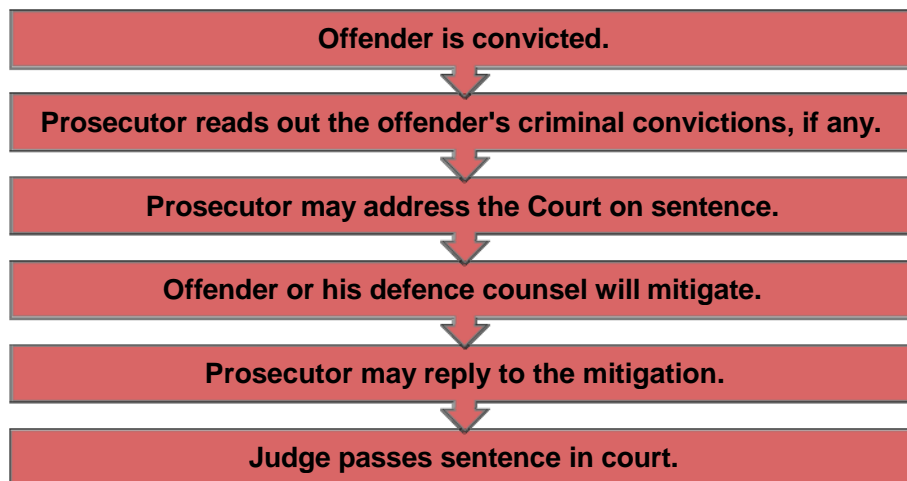
At the start of sentencing, the prosecutor informs the Court whether the offender has any criminal convictions. If so, the prosecutor will read out the offender's previous conviction(s), which the offender will either confirm or dispute. Thereafter, the prosecutor may address the Court on what would be an appropriate sentence. The prosecutor's role is not to press for the highest possible sentence. Instead, it is to assist the Court in deciding on a sentence which accurately reflects the seriousness of the offence and the culpability of the offender. In doing so, the prosecutor may highlight the aggravating facts and also tender similar past cases to show what the usual sentence meted out to offenders who had committed similar acts is.

The offender, or his defence counsel, if engaged, may then mitigate *i.e.* highlight any reasons why a lighter punishment should be imposed. The prosecutor has the right to reply to the mitigation and address any issues raised.

After deliberating on all factors, the Court will decide what punishment the offender should receive and pass sentence accordingly.

The following diagram shows a summary of the sentencing process.

Diagram 1.

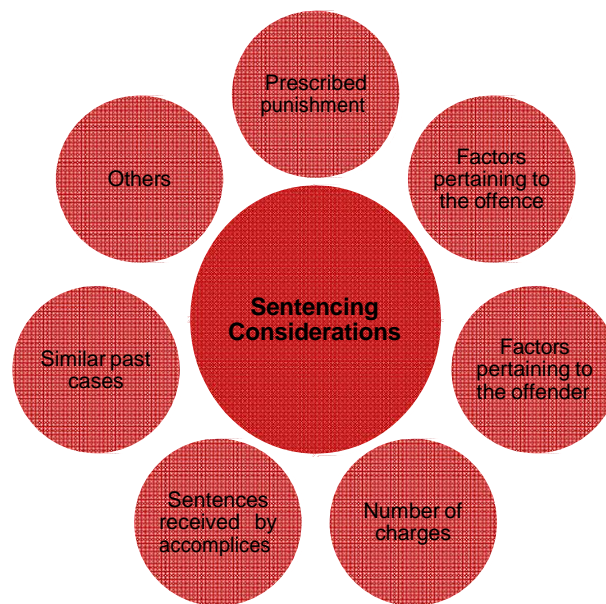


Sentencing Considerations

While sentencing ultimately lies in the hands of the judge, the Prosecution plays a crucial role in assisting the Court to mete out an appropriate sentence. This is especially so when the Prosecution addresses the Court on the sentence to be imposed. In deciding whether to argue that a certain type or length of punishment is warranted, the Prosecution will consider the four principles of sentencing, and also the factors below, which are relevant to the Court's consideration. The Prosecution will also point out how these factors should operate in each particular case.

The following diagram shows a summary of the sentencing considerations.

Diagram 2.



The relevant factors include:

1. The prescribed punishment for the offence and any limits on the maximum or minimum punishments to be imposed. Sometimes, there may be mandatory types of punishment to be imposed, e.g. imprisonment, a minimum fine or caning.
2. Factors pertaining to the offence, such as the nature, impact and prevalence of the offence. Aggravating and mitigating factors relating to the specific offence will be considered. Emphasis will also be placed on whether there is public interest in treating a particular sort of behaviour severely. To this end, any relevant parliamentary debates on the purpose of enacting the provisions may also be referred to.
3. Factors pertaining to the offender, such as:
 - Whether the offender is remorseful, e.g. whether he had pleaded guilty or admitted to the offence early.
 - Whether the offender has a bad record or has committed similar offences before.
 - Whether the offender has made voluntary restitution or compensation to the victim, e.g. by paying for medical bills in a hurt case, or returning stolen property.

- Whether there are circumstances relating to the offender which may reduce his blameworthiness e.g. young age, mental incapacitation or disability, psychiatric disorder, etc.
4. The number of charges which the offender is facing. An offender facing multiple charges may have been convicted on all of them, or may have charges which he consented to be taken into consideration. In the latter situation, the Court will only impose sentences in respect of those charges which the offender was convicted on. However, the Court will have regard to the type and number of charges taken into consideration.

Where an offender is convicted on multiple charges, a sentence will be imposed for each charge. If the sentences include imprisonment terms, the Court must then decide whether the sentences should run concurrently or consecutively. In doing so, the Court will abide by the established principles of sentencing, as well as any rules prescribed by law.

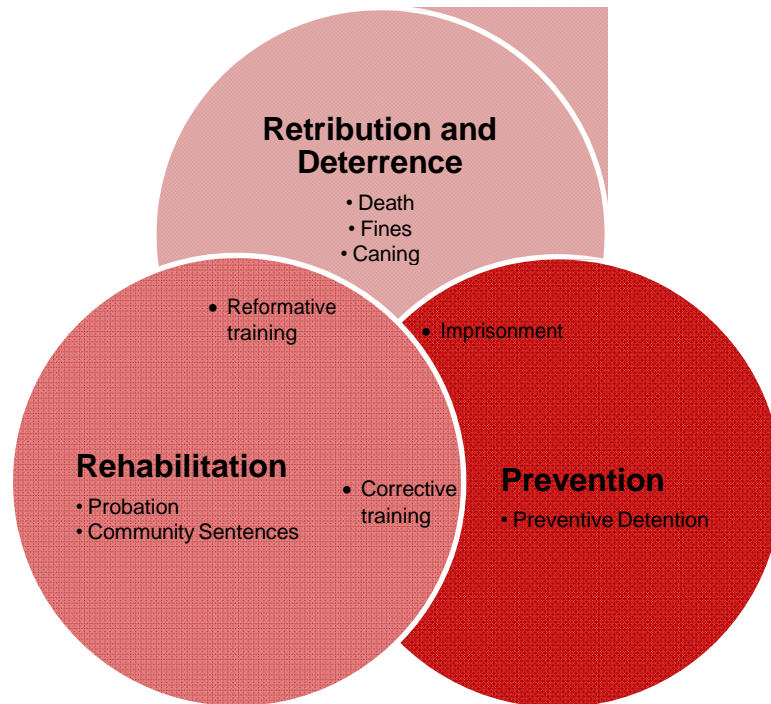
These principles include the *one-transaction principle*, which means that sentences in respect of multiple offences committed very closely in a single criminal episode should run concurrently. The *totality principle* also applies such that the Court should generally not impose an overall sentence which is crushing when compared to the maximum punishment possible for each offence. Such principles, however, are not absolute. For instance, where an offender is convicted on three or more offences, the Court must order at least two of the sentences to run consecutively.

5. The sentences received by accomplices, if any. While the Court will consider the sentence received by accomplices who were involved in the same crime, it will not always impose identical sentences. Instead, the Court will also consider whether there is a difference in culpability, based on their individual roles, their backgrounds, and whether each had pleaded guilty or claimed trial.
6. Sentences imposed in similar cases and judicial pronouncements. The Court will be guided by pronouncements made by the High Court and the Court of Appeal. In addition, to ensure consistency, the Court will consider the sentence imposed by other courts in similar cases, and is bound by practice to follow these decisions. However, the Court will not blindly follow the sentences imposed in previous cases, but will also consider how the facts differ.

The Court's Options: Types of Sentences and Orders

The following diagram shows the types of sentences which the Court can impose, categorised according to the main sentencing principles behind them:

Diagram 3.



Death

For some very serious offences (e.g. murder, trafficking of drugs above a certain amount), the Court may sentence an offender to death. Only the High Court can pass a death sentence. In cases in which the death penalty is discretionary, the Courts will examine the contributing factors before deciding whether a capital sentence should be imposed.

Fines

Depending on the type and severity of offence, fines can be imposed as an alternative to a prison sentence, or in addition to it. If an offender does not pay the fine, he must serve a sentence of imprisonment in default. The length of the default sentence will be decided by the Court.

Imprisonment



A Court may sentence the offender to spend a period of time in prison. After an imprisonment term is ordered, the Court will also pronounce when the term is to commence. The Court may order the sentence to be backdated, if the offender was

remanded in prison before the sentence was passed. Alternatively, if an offender was released on bail before he was sentenced, and there are good reasons why the sentence should only commence later, the Court may also order the sentence to commence at a later date.

Caning

In addition to imprisonment, the Court can also order caning in respect of serious offences where the law specifically provides for it. Depending on the type and severity of offence, this may be ordered on a discretionary or mandatory basis (e.g. for rape and robbery). However, only male offenders below the age of 50 can be caned. Those ineligible for caning may receive an additional imprisonment term of up to 12 months instead.

Corrective Training

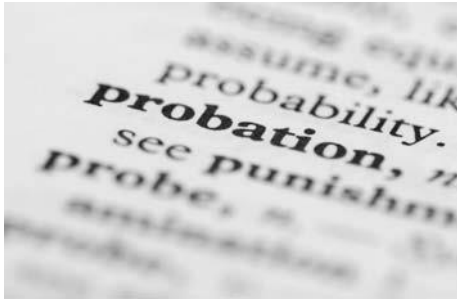


Corrective training is a separate regime from imprisonment which involves a long period of incarceration in the prisons lasting 5 to 14 years. It is usually imposed when the Court finds that the offender needs to receive training of a corrective character for a substantial period of time, for his reform and for the prevention of crime. Corrective training can only be imposed by a District Court or the High Court, and when certain requirements are satisfied, including: the offender must be above 18 years of age, a repeat offender who has previously been imprisoned, and is certified fit to undergo corrective training.

Preventive Detention



Preventive detention is a separate regime from imprisonment which involves the incarceration of an offender for 7 to 20 years in the prisons. It is a very severe punishment, and is only imposed when the Court is satisfied that he is a recalcitrant offender who should be locked away so as to protect the public from him. As with corrective training, a District Court or the High Court can only impose preventive detention on an offender who has previously been imprisoned, and is certified fit to undergo preventive detention. Among other requirements, he must also be at least 30 years old.



Probation

Instead of receiving a fine or imprisonment, an offender may also be placed on probation. For most purposes, probation will not count as a criminal conviction. An offender placed on probation will be supervised by a probation officer for a period between 6 months and 3 years. While the offender is free to carry on his daily activities, he must not reoffend and must also adhere to the conditions attached to his probation, e.g. curfews and community service requirements. Otherwise, he may face consequences, which may include the termination of probation and the imposition of a fine or imprisonment term instead.

When deciding whether to grant probation, the Court will consider the nature and severity of the offence, the character of the offender, and a report prepared by the probation officer. Although probation is also available for adult offenders, it is more commonly ordered in respect of those below 21 years of age. This is because the main principle behind probation is rehabilitation, which is the dominant consideration in sentencing young offenders. However, this does not mean that a young offender will definitely be granted probation.

Reformative Training

Offenders aged below 21 years may also be sentenced to reformative training. Compared to probation, reformative training is a more severe punishment which requires the young offender to be detained in a structured environment for a minimum period of 6 or 12 months. However, there will still be emphasis on rehabilitation. When deciding between probation and reformative training for a young offender, the Court will consider the seriousness of the offence, the offender's record, and how likely he is to be rehabilitated.

Community Sentences

Where the offence(s) committed is not too serious and the offender has not been sentenced to imprisonment exceeding three months before (note: this does not apply to the mandatory treatment order, for mandatory psychiatric treatment), an offender may receive a community sentence. Community sentences include:

- **Mandatory Treatment Order:** An order requiring an offender to undergo psychiatric treatment for a maximum period of 36 months. This is targeted at offenders suffering from a treatable underlying psychiatric condition, who are amenable to receiving treatment.

- Day Reporting Order: An order requiring an offender to report on a regular basis for a period of 3 – 12 months for supervision and / or counselling or rehabilitation.
- Community Work Order: An order requiring an offender to perform supervised community work associated to his offence for a period of time.
- Community Service Order: An order requiring the offender to perform supervised community service for a period of time.
- Short Detention Order: An order requiring the offender to be detained in prison for up to 14 days.

There are restrictions on when and how a community sentence may be imposed.

Subject to specific rules, the Court may also impose the following orders *on top of* the sentences above:

Disqualification from driving

An offender who commits certain offences involving the use of a motor vehicle may also be disqualified from holding a driving licence for a period of time. Depending on the offence, disqualification may be ordered on a discretionary or a mandatory basis (e.g. drink driving).

Compensation Orders

The Court may also order an offender to make monetary compensation to a victim who has sustained injury to his person, character or property. After an order is imposed, the Court may direct that the offender be imprisoned if he does not make payment.

Recourse for Dissatisfaction with Sentence

Should an offender be dissatisfied with the sentence imposed, he can appeal against the sentence and must do so within 14 days. The Prosecution also similarly has the right to appeal against a sentence which it considers to be manifestly inadequate.

Conclusion

As the learned former Chief Justice Chan Sek Keong has astutely stated:

“Sentencing is not an exact science, and is essentially a matter of discretion and judgment call. It is fundamental that sentences are to fit the facts of the

case. As no two cases are exactly alike, it is sometimes challenging to draw a unifying thread that rationalizes and ties together the different sentences imposed on what appears to be similar cases.

While judges consider and explore ways to mete out just punishments to offenders, sentencing values and principles on the purposes of punishment, the primacy of the public interest, proportionality, consistency and parity must remain constant. These fundamental values provide certainty and a check on aberrations in judicial sentencing which sometimes beset the criminal justice system due to the personal make up of individual judges”.

There is no magical or mathematical formula which can be used to determine an appropriate sentence. Sentencing involves the delicate balancing of all the facts and circumstances of the case, and this unenviable task falls on the shoulders of the presiding judge. Even so, the Prosecution, on behalf of the State and the wider community, plays an essential role in the process, ensuring that the judge’s attention is drawn to the relevant facts and materials, and the values which the former CJ highlighted as paramount in sentencing.



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