

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

District Arrest Case No 902587 of 2023

Public Prosecutor

Against

Yao Zhi Hai Edmond

ORAL JUDGEMENT

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Public Prosecutor
v
Yao Zhi Hai Edmond

District Arrest Case No 902587 of 2023
District Judge James Elisha Lee

13 March, 2 to 4 June, 3 to 6 November 2025, 26 January, 19 March, 28 Apr
2026

26 May 2026

District Judge James Elisha Lee

Introduction

1 This is my decision with brief reasons, which I will supplement in the event full grounds are issued or necessary.

2 The accused Yao Zhi Hai Edmond (“the Accused”) has been convicted after trial on a charge under s 10 read with s 32(a) of the Enlistment Act (Chapter 93, Revised Edition 1995) (“EA”).

3 He has also pleaded guilty to 3 charges under s 5A(1)(a) Immigration Act (Cap 133, 2008 Revised Edition) (“IA”) and consented to the remaining 11 similar charges under the IA taken into consideration for the purpose of sentencing (“TIC”).

Prescribed Penalties

4 The prescribed punishment for the offence under s 10 read with s 32(a) EA is a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years or to both.

5 The prescribed punishment for the offence under s 5A(1)(a) IA is a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 years or to both.

Prosecution's Address on Sentence

6 The Prosecution has submitted for the maximum sentence of **36 months' imprisonment** in respect of the charge under s 10 read with s 32(a) EA. For the charges under s 5A(1)(a) IA, they have submitted for the maximum fine of \$1,000 for each of the 3 proceeded charges. The total sentence sought by the Prosecution is therefore 36 months' imprisonment and \$3,000 fine.

General Deterrence

7 The Prosecution referred to the High Court's decision in *PP v Sakthikanesh s/o Chidambaram and other appeals and another matter* [2017] 5 SLR 707 ("*Sakthikanesh*") and submitted that the punishment for NS defaulters must be sufficiently severe, so as to "deter potential offenders from evading their obligations or opting to postpone them to a time of their own convenience" (at [48]).

8 In *Sakthikanesh*, the High Court had held that the statutory maximum sentence of 36 months' imprisonment should be the starting point in the sentencing of NS defaulters whose period of default was around 23 years or more, as they would not only have evaded the whole of their full-time NS

obligations, but also their post-ORD reservist obligations (at [62]). The court should then consider all the circumstances of the case, including the relevant aggravating and mitigating factors in arriving at the final sentence in each case (at [91]). The High Court had further held that an offender's connection to Singapore or the amount of benefit he has enjoyed as a Singapore citizen is generally irrelevant in the sentence calibration.

9 The Prosecution highlighted that the Accused had evaded the whole of his full-time NS obligations and post-ORD reservist obligations and had gained an unfair advantage over his peers. They submitted that the Accused therefore falls within the worst category of NS defaulters. The Prosecution further submits that there are no mitigating factors warranting a downward adjustment to sentence.

10 The Prosecution cited the case of *Sim Gek Yong v PP* [1995] 1 SLR(R) 185 ("*Sim Gek Yong*") where Chief Justice Yong had held at [13] that a court, in deciding when to impose the maximum sentence, need only identify a range of conduct which characterises the most serious instances of the offence in question. The Prosecution highlighted that the Accused had avoided resolving his offence until his arrest where it was no longer possible for him to serve any of his NS obligations despite being fully aware of his NS liabilities. This showed a cavalier treatment of and wilful disregard by the Accused of his NS obligations.

Precedents

11 The Prosecution sought to distinguish the present case from the case of *Seow Wei Sin v PP* and another appeal [2011] 1 SLR 1199 ("*Seow Wei Sin*") where the High Court had reduced the sentence on appeal to a non-custodial

sentence. The Prosecution also pointed out that the High Court in *Sakthikanesh* had also held that the facts in *Seow Wei Sin* were exceptional and the circumstances unique.

12 The Prosecution drew comparison between the present case and the case in respect of *Ang Lee Thye*, which appeal was addressed jointly with *Sakthikanesh* where the original sentence of 24 months' imprisonment was overturned on appeal and enhanced to 33 months' imprisonment. The offender in *Ang Lee Thye* had remained outside of Singapore without a valid exit permit since he was 14 years of age and only returned to Singapore and surrendered to CMPB 23.5 years later. The High Court applied a 3-month downward adjustment from the maximum of 36 months' imprisonment on account of his voluntary surrender and plea of guilt. In the present case, the Accused had neither surrendered voluntarily nor pleaded guilty.

The IA Charges

13 The Prosecution pointed out that there is at present no sentencing framework for the offence and had referred to unreported decisions involving similar factual matrixes in calibrating the sentence. They submitted that the maximum fine per charge is warranted in view of the TIC charges.

Mitigation and the Defence's Submissions on Sentence

14 The Defence had submitted for the maximum prescribed fine of \$5000 in respect of the charge under the EA.

15 The basis for the Defence's submission can be summarised as follows:

- a) the Accused had believed in good faith that he was justified by Indonesian law not to enlist for NS in Singapore as he would automatically lose his Indonesian citizenship if he served NS;
- b) that the Accused had not evaded the authorities and had travelled openly in and out of Singapore between 1997 and 2003;
- c) no enforcement action had been taken against the Accused during this period;
- d) although the Accused had used his Indonesian passport, which reflected the name “Edmond Ming Siang Jauw”, for his travels into and out of Singapore during this period, both CMPB and ICA were aware of the Accused’s identity;
- e) when the Accused applied to renounce his Singapore citizenship in October 2003 and was subsequently informed by ICA that his application was being withheld, neither MINDEF nor CMPB had informed the Accused to report to CMPB. When the Accused entered Singapore subsequently in December 2003, he was also not arrested or subject to any enforcement action;
- f) when the Member of Parliament wrote to the Senior Parliamentary Secretary of the Ministry of Home Affairs (“MHA”) on behalf of the Accused’s mother DW2 Koh concerning the Accused’s NS issues in between December 2003 and January 2004, ICA had written to DW2 Koh to inform that the Accused’s renunciation application had been withheld. ICA and MINDEF similarly did not advise the Accused to

report to CMPB. The Accused was also not informed that he was wanted for any offence;

- g) when the Accused applied for permanent residence in Singapore on 5 February 2005, his application was rejected on the same day and ICA had stated that the Accused is still a Singapore citizen. CMPB had also conducted a house visit on 21 February 2005, but no enforcement action was taken against the Accused;
- h) as the offence was committed before the amendment to the EA in 2006, the “sentencing landscape” prior to the amendment, which is that offenders convicted of failing to enlist for NS were dealt with by way of a fine should apply;
- i) the Accused’s parents had not had the benefit of being informed at the Accused’s birth concerning the legal consequences associated with NS and that they had only become aware of the Accused’s NS obligations when the Accused was 17 years old, which was too late by then for them to take any steps to preserve his Indonesian citizenship;
- j) the Accused had honestly believed at all material times that he is an Indonesian citizen and could only enter and remain in Singapore as a foreigner. This is supported by the fact that he had attempted to apply for a work pass in 2003, permanent residence in 2005, and a Short-Term Visit Pass in 2020, which was approved by ICA;
- k) the Accused had remained co-operative during investigations and was permitted to travel;

- l) the Accused's offence had caused negligible harm as the Accused did not exercise, enjoy or benefit from any material rights and privileges in respect of the education he received in Singapore, nor did he intend to. The Accused's parents also had no choice but to enrol him in a local school in Singapore as the Accused, by virtue of his Singapore citizenship, was not allowed to attend international schools. There was also no material difference between the school fees paid by local and foreign students at the material time. The Accused had also never had a Singapore passport, did not vote in any elections and did not receive healthcare benefits in Singapore;

- m) that the delay in prosecution has caused prejudice to the Accused as the Accused had organised and live his life for some 24 years on the footing that the matter had been resolved or, at the very least, would not be pursued. The Accused has also been denied the option of serving NS. The Defence cited the case of *Tan Kiang Kwang v PP* [1995] 3 SLR(R) 746 (SGHC) ("*Tan Kiang Kwang*") where CJ Yong had held that a court may reduce a sentence in an appropriate case if conditions are met.

16 The Defence cited the case of *Seow Wei Sin v PP* [2011] SLR 1199 (SGHC) ("*Seow Wei Sin*") where the High Court had reduced the original sentence of 18 months' imprisonment to a fine of \$5000 on appeal. The Defence also referred to the case of *Chang Kar Meng v PP* [2017] 2 SLR 68 (SCGA) ("*Chang Kar Meng*") where CJ Menon had held that sentencing must remain fair to the individual offender, and that fairness includes taking into account the legal and sentencing landscape that existed at the time of the offending conduct.

17 The Defence sought to distinguish the present case from *Sakthikanesh* and the related appeals, namely *Ang Lee Thye* (“*Ang*”) and *Vanada Kumar s/o Chidambaram* (“*Vandana*”) in that case. In *Ang*, CJ Menon had noted that Ang deliberately timed his return to Singapore so that he would not have to serve any of his NS obligations. In contrast, the Accused did not make any calculated move to deliberately evade any NS obligations. As for *Sakthikanesh* and *Vandana*, the Defence submitted that they had both derived substantial benefits from the Singapore citizenship, unlike the Accused.

18 They also cited the following cases where custodial sentences were imposed with a view to distinguishing them:

- a. *Naresh Kumar s/o Nagesvaran v PP* [2025] 4 SLR 1068 (SGHC)
- b. *PP v Tan Huai En Jonathan* [2017] SGDC 17
- c. *PP v Chew Joon Kiat* (SC-908422-2025)
- d. *PP v Garrett Alexander Gan Kok Leng*
- e. *PP v Christopher Ryan Gan Kok Hong*
- f. *PP v Vin Lau Jun Sheng*

19 The Defence has sought to distinguish these cases from the present case on either, or all of the following grounds:

- (a) the offenders in those cases did not have any reasonable grounds for refusing to serve NS, unlike the Accused who stood to lose his Indonesian citizenship if he were to do so;

(b) the offenders had enjoyed substantial privileges as a Singapore citizen, unlike the Accused who had never sought to take advantage of his Singapore citizenship;

(c) the offenders had deliberately stayed out of Singapore while the Accused had travelled in and out of Singapore during the material period.

20 The Defence does not appear to challenge the Prosecution's sentencing position in respect of the 3 charges under the IA.

Prosecution's Reply

21 The Prosecution, in response to the Defence's mitigation plea, submitted that the Defence's claim that the Accused had been transparent with the Singapore authorities is disingenuous as he had travelled in and out of Singapore using a name which he had renounced via a deed poll. The Accused had also concealed his Singapore citizenship when he attempted to apply for a Short-Term Visit Pass ("STVP"). The Prosecution submitted that it had been made expressly clear that it was incumbent on the Accused to contact CMPB to resolve his outstanding NS liabilities.

22 The Prosecution submitted that the Defence's submission that the level of harm caused by the Accused is negligible is misconceived. They referred to *Sakthikanesh* where the High Court had explained the harm resulting from an offender defaulting on his NS obligation. The Prosecution also highlighted that the High Court in *Sakthikanesh* had also rejected the view that the sentence to be meted out to an NS defaulter should be calibrated based on the benefits he enjoyed or would enjoy as a Singapore citizen.

23 As for the Defence's submission that the sentencing regime before the 2006 amendment to EA should apply, the Prosecution submitted that the applicable sentencing framework is that set out in *Sakthikanesh* and that the framework had been applied in multiple cases involving offenders who had defaulted on their NS obligations prior to the 2006 amendments, including *Ang Lee Thye*. The Prosecution also referred to the cases of *Adri Anton Kalangie v PP* [2018] SGCA 40 ("*Adri Anton*") and *Pua Om Tee v PP and another appeal* [2022] SGHC 116 as contrary to the Defence's submission that the Accused had a legitimate expectation that the offence would only attract a fine. The Prosecution further submitted that the Defence's claim that prior to the 2006 amendments, offenders convicted of failing to enlist for NS were dealt with by way of a fine is unsupported.

24 On the Defence's submission on delay in enforcement and prosecution, the Prosecution referred to the case of *Chan Kum Hong Randy v PP* [2008] 2 SLR(R) 1019 ("*Randy Chan*") and submitted that there was no delay in prosecution, and even if there was, the Accused had contributed to the delay by continuing to use his Indonesian passport to travel in and out of Singapore, thereby evading detection and actively misleading the authorities. There had also been no delay between the Accused's arrest in September 2021, and the eventual prosecution given that the Accused was also involved in immigration offences which spanned over 10 years. The Prosecution further submitted that there was no evidence supporting the Defence's claim of prejudice caused to the Accused.

Sentencing Considerations

General Deterrence

25 The sentencing approach for the offence under the EA is well established in *Sakthikanesh*. The High Court in *Sakthikanesh* observed at [47] that the underlying principles affecting NS are national security, universality and equity, making reference to the Ministerial Statement by then Minister for Defence, Mr Teo Chee Hean made in Parliament in 2006¹, which this court has also referred to in the previous oral judgment on conviction at [61]. The High Court held at [48] that,

“When a person refuses to serve NS at the time that he is required to and instead returns to serve at a time of his own choosing, or worse, at an age when he can no longer serve, his actions strike at the very core of the principles of national security, universality and equity. As his peers put aside their individual pursuits to serve NS when they were called upon to, the NS defaulter makes an exception for himself, where no exceptions are permitted. Lenient treatment of NS defaulters can create strong feelings of unfairness and resentment in those who have made personal sacrifices to serve NS and over time, lower their morale and eventually also erode public support for NS. The punishment for NS defaulters must also be sufficiently severe, so as to deter potential offenders from evading their obligations or opting to postpone them to a time of their own convenience. Were it otherwise, the perception that NS can be done on one’s own terms would undermine the strength of our defence force and thus our national security. We therefore reiterated what had been said in previous decisions, that general deterrence is the key sentencing objective in the

¹ *Singapore Parliamentary Debates, Official Reports* (16 January 2006) Vol 80 at cols 2000-2083.

sentencing of NS defaulters: see *Lim Sin Han Andy v Public Prosecutor* [2000] 1 SLR(R) 643 at [18]; *Seow Wei Sin* at [36] and *Mohammed Ibrahim* at [22].”

26 The High Court held at [57] that the length of the period of default would, as a general rule, be the key consideration in the determination of the appropriate sentence for an NS defaulter, with all the circumstances surrounding the commission of the offence to be considered as well. The High Court further held at [62] that the statutory maximum sentence of 36 months’ imprisonment should be the starting point for NS defaulters whose period of default was around 23 years or more, as they would not only have evaded the whole of their full-time NS obligations, but also their post-ORD reservist obligations. In this regard, the High Court explained at [64] that,

“The conduct of an NS defaulter who defaulted for such a long period of time, such as when he returned past the age of 40 and it was no longer possible for him to serve any of his NS obligations, would fall within the range of conduct which characterises the most serious instances of the offence. Such an offender would not only have refused to serve at the time that he was required to, he would also have evaded his NS obligations in their entirety. Currently, every male Singapore Citizen who is required to serve NS must serve two years of full-time NS. He must also serve his post-ORD reservist obligations, which, according to MINDEF, may potentially add up to 400 days of service during peace-time (based on ten years’ of reservist cycles and a maximum annual call-up of 40 days). The NS defaulter thus gains an unfair advantage over his peers in being able to pursue his personal interests during the more than three year period that his peers were serving NS. In our judgment, to adopt anything less than the statutory maximum sentence of 36 months’ imprisonment as the starting point in the sentencing of this category of NS defaulters would be inadequate.”

27 The Accused was past the age of 40 when he was arrested on 1 September 2021. His period of default, calculated from the date he failed to report for enlistment on 24 January 1997 to his 40th birthday on 31 October 2018 when the Accused became no longer a person subject to the EA, is 21 years, 9 months and 7 days. The Accused had therefore evaded the whole of his full-time NS obligations and his post-ORD reservist obligations.

28 While the period of default may have been slightly less than the period of default of 23.5 years in *Ang Lee Thye*, I am of the view that the appropriate starting point should still be the maximum prescribed sentence of 36 months' imprisonment. The Accused falls squarely within the worst category of NS defaulters as described in *Sakthikanesh*. The High Court in *Sakthikanesh* had referred to *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185 where CJ Yong had held at [13] that "a court, in deciding when to impose the maximum sentence, need only identify a range of conduct which characterises the most serious instances of the offence in question", and held at [64] that "the conduct of an NS defaulter who defaulted for such a long period of time, such as when he returned past the age of 40 and it was no longer possible for him to serve any of his NS obligations, would fall within the range of conduct which characterises the most serious instances of the offence." I am of the view that the conduct of the Accused falls within the same range and therefore, there is no basis for adopting a lower starting point.

Absence of Mitigating Factors

29 The mitigation plea comprises essentially the following planks:

- a. that the Accused had honestly believed himself justified in not serving NS given his Indonesian citizenship as doing so will result in him losing his Indonesian citizenship;
- b. that there has been no, or negligible harm caused as the Accused had not exercised, enjoyed or benefitted from any material rights and privileges in respect of the education he received in Singapore.
- c. that no enforcement action had been taken against him between the date he had failed to report for enlistment, i.e. 24 January 1997 and his arrest in September 2021 even though he had travelled in and out of Singapore on multiple occasions during this period;
- d. that the sentencing framework in *Sakthikanesh* does not apply given that the Accused's failure to report for enlistment was in 1997 and that the case law pre-dating the 2006 amendment to the EA should apply;

The Accused's dual citizenship

30 There is no dispute that MINDEF was fully aware of the Accused's Indonesian citizenship when the Enlistment Notices were issued to him to report for enlistment for NS. There is also no dispute that MINDEF had also been informed that the Accused, as an Indonesian citizen, was not allowed to serve in the armed forces of another country. The inference to be drawn, as such, would be that MINDEF had considered the Accused's position and decided as a matter of policy that the Accused is still obliged to fulfil his NS obligation as a Singapore citizen.

31 In *Sakthikanesh* at [70], the High Court, in rejecting the view that the sentence to be meted out to an NS defaulter should be calibrated based on whether he has a substantial connection to Singapore, or the amount of benefits he has enjoyed as a Singapore citizen, had held that it was clear that MINDEF was the agency that had the statutory responsibility for administering the EA, which made it an offence for anyone required by MINDEF to serve NS to default on his NS obligations. The High Court held that the determination of substantial connection to Singapore was a matter with policy implications that was within the prerogative of MINDEF and that as long as MINDEF has issued the enlistment papers to a male Singaporean, that person would need to serve NS and he would be liable for an offence under the Act if he fails to comply. As such, questions as to the extent of connection to Singapore would generally be irrelevant and that “any other view would severely undermine the principle of universality and equity by differentiating between classes of Singapore citizenship, when in truth, no such differentiation exists.”

32 The same principle would apply in the present case. The issues concerning the Accused’s Indonesian citizenship and the impact serving NS would have on it, would similarly be a matter with policy implications which would be within MINDEF’s prerogative. These issues would similarly be of no relevance to the calibration of sentence. Otherwise, it would effectively amount to differentiating the Accused from other Singapore citizens when there is no basis for doing so and would be an affront to the principle of universality and equity underpinning NS.

33 The Defence has submitted in oral submissions that the prosecution’s prayer for a custodial sentence totally disrespects the Accused’s need to keep his citizenship, which by extension, also disrespects Indonesia. With respect, this court is unable to see how a sovereign state enforcing its domestic laws

against its own citizen could amount to any form of disrespect to a foreign state or its citizen.

No or Negligible Harm

34 The Defence's submission that there has been no, or negligible harm caused by the Accused's failure to enlist as he had not exercised, enjoyed or benefitted from any material rights and privileges in respect of his education in Singapore should similarly be rejected on the ground that the questions of whether the Accused had exercised, enjoyed or benefitted from these rights and privileges is ultimately of no relevance to sentencing as they would also fall within the prerogative of MINDEF.

35 It would also not be correct for the Defence to submit that no harm has been caused by the Accused's failure to report for enlistment. In *Sakthikanesh*, the High Court held at [52] that,

“There are multiple facets to the harm occasioned by NS defaulters. At one level, by choosing to serve their NS obligations not when they are required but only when it is convenient for them (or in some cases evading part of or the whole of their NS obligations), NS defaulters harm the operational readiness of the armed forces. At another level, they also harm the morale of fellow citizens who have made personal sacrifices to serve their NS obligations when they were called upon to do so. This can in turn lead to repercussions such as growing resentment and the loss of public support for NS, threatening the ability of our armed forces to ensure Singapore's national security (see [48] above). Each and every member of the Singapore public would then become a victim.”

36 The High Court held at [51] that “the culpability of NS defaulters lies in the unfair advantage that they gain over their law-abiding peers by being able to pursue their personal goals (such as education or career advancements), while their peers were serving their NS obligations... NS defaulters thus violate the fundamental principles of universality and equity.”

Delay in Enforcement Action & Prosecution

37 The Defence’s main contention is that the Accused had been allowed to travel freely in and out of Singapore during the material period on multiple occasions and would have afforded opportunities for enforcement action to be taken against him. Opportunities for enforcement action would also have arisen when the Accused applied firstly to renounce his Singapore citizenship, secondly for permanent residence, and thirdly when he applied for a Short-Term Visit Pass. The failure by MINDEF to do so had caused prejudice to the Accused.

38 In *Tan Kiang Kwang*, CJ Yong held that,

“Delay in prosecution simpliciter may not even be a mitigating factor. Nonetheless, in appropriate cases, the court may exercise its discretion to order a ‘discount’ in sentence, if there has been a significant delay in prosecution which has not been contributed to in any way by an accused person, if it would otherwise result in real injustice or prejudice to the accused.”

39 In *Randy Chan*, the High Court, in reference to *Tan Kiang Kwang*, held at [22] that,

“the significance of a delay in prosecution, if any, in the context of criminal justice hinges primarily on the effect of such a delay on the accused. This can

be categorised for easier analysis under two headings: (a) considerations of fairness; and (b) the repercussions of delay on the offender’s effective rehabilitation and reintegration into society.”

40 The High Court in *Randy Chan* further held at [32] that “in cases of inordinately delayed prosecution, the first and foremost inquiry should always be whether the accused was in any way responsible for the delay.” The second, at [35] would be “the rehabilitative progress of the offender must be considered in the light of the nature and the gravity of the offence, as well as the wider public interest in each individual case.” The High Court further held that “considerations of fairness to an accused may in certain circumstances be substantially irrelevant – or, indeed, even outweighed by the public interest.”

41 In the present case, the police gazette against the Accused had been raised on 28 January 1997, which was less than 5 days after his failure to report for enlistment on 24 January 1997. Although the Accused had travelled in and out of Singapore during the period prior to his eventual arrest in September 2021, he had done so using his Indonesian passport. The Accused’s Indonesian passport reflected his name as “Edmond Ming Siang Jauw”. The police gazette, however, bore the name “Yao Zhi Hai Edmond”, which was the name reflected in the Accused’s Singapore NRIC and the enlistment notices issued by CMPB. In other words, the Accused had travelled in and out of Singapore as an Indonesian foreigner bearing a different name. It is probable, as such, that that would have been a key contributing factor why the Accused had not been apprehended on those occasions. Between 31 December 2008 and 16 March 2020, the Accused had used his Indonesian passport to enter Singapore on 13 occasions in breach of s 5A(1)(a) IA, which formed the basis for 13 of the charges under the IA to which the Accused had pleaded guilty to 3 and consented to the remaining being TIC.

42 As such, notwithstanding the Defence's submission that both the ICA and MINDEF ought to have been aware that "Edmond Ming Siang Jauw" was the Accused, it cannot be gain said that the Accused had contributed to his non-apprehension through his own actions.

43 It is also important to note that CMPB has consistently made clear to the Accused and his parents that the Accused had to fulfil his NS obligations as a Singapore citizen notwithstanding the fact that he is also an Indonesian citizen. The Accused had, in blatant disregard of the enlistment notices, knowingly and intentionally failed to report for enlistment. Up until his arrest in September 2021, the Accused had made no attempt to contact CMPB regarding his outstanding NS obligations. This was despite having been informed by ICA in December 2003 that his application to renounce his Singapore citizenship was being withheld under Article 128(2)(b) of the Constitution of the Republic of Singapore which provides that the Singapore Government may withhold registration of any declaration of renunciation of citizenship unless the person has, *inter alia*, discharged his NS liabilities. This was also despite the Accused's mother DW2 Koh having been informed by ICA in 2004 to liaise directly with CMPB to resolve the Accused's NS obligations. In 2005, ICA had also written to the Accused that they were unable to proceed with his application for permanent residence as the Accused is still a Singapore citizen. Given the above, the Accused's failure to contact CMPB to resolve the issue concerning his NS liabilities can only be attributed to an outright refusal to acknowledge and accept his NS obligation as a Singapore citizen, a position which the Accused had maintained to date.

44 Given the circumstances, it is, in my view, disingenuous on the part of the Accused to now claim that he had been prejudiced as a result of no enforcement action having been taken against him until his arrest in September

2021 when he had clearly contributed to his non-apprehension. The Accused's claim that he had been deprived of the opportunity to fulfil his NS obligation as a result of delayed enforcement action and prosecution, when it was the Accused who had blatantly refused to accept his NS obligations in the first place, is therefore rich.

45 Having considered the totality of the circumstances, I am of the view that any delay in enforcement action was contributed materially by the Accused's own actions or inaction. I am also of the view that there was no delay in prosecution as the period between the Accused's arrest and him being eventually charged in court, a period of about 1 year and 5 months was not unreasonable given the nature of the offences involved and the facts and circumstances of the case. I am therefore of the view that there had been no unfairness or injustice occasioned upon the Accused brought about by any delay in prosecution.

Non-application of Sakthikanesh

46 The Defence has submitted that the sentencing approach in *Sakthikanesh* should not apply in the present case given that the Accused's failure to report for enlistment took place in 1997. This is a submission which, in my view, is devoid of any merit.

47 In *Ang Lee Thye*, the offender had been charged with 2 counts of remaining outside of Singapore without a valid exit permit. The 2 charges covered the period between 24 May 1990 and 23 November 2013. The High Court had applied the same sentencing approach even though the offence dated back to 1990. There is no reason why the present case should be viewed any differently.

48 The Defence has referred to the case of *Seow Wei Sin* in support of their submission for a non-custodial sentence. The High Court had held in *Sakthikanesh* at [71] that *Seow Wei Sin* needed to be considered in the context of its unusual facts. The court had held at [37] – [39] that the three fundamental principles underpinning the NS policy in Singapore, *viz*, national security, universality and equity, did not apply to the offender. The offender in that case was born in 1961 and had left Singapore with his family when he was one year old and had not lived in Singapore since. At that time, NS in its present form had not been implemented. The court had observed that the offender had not left Singapore to evade his NS liability but had no choice as the family had decided to migrate to Malaysia. The court also found that to the offender’s mind, his father had sorted things out with the Singapore authorities regarding his NS liability and had no reason to think that it had not been resolved.

49 Given the exceptional facts and circumstances, I am of the view that the case of *Seow Wei Sin* has no application in the present case.

50 The Defence has cited the case of *Chang Kar Meng* in support of their submission. In that case, the Court of Appeal (“CA”) had held at [75] that the offender was entitled to rely on the sentencing range established by the relevant precedents and that there was no basis for ignoring his legitimate expectations, having regard to the general range of sentences previously meted out in similar cases. The CA’s holding must be understood in the proper context of the case, which is the comparison of the sentence meted out against the offender with the sentencing range in similar precedents.

51 In *Adri Anton Kalangie v PP* [2018] SGCA 40 (“*Adri Anton*”), the CA held at [57], that “it is not entirely clear if an individual can even, *at the time of commission of the offence*, be said to have a legitimate expectation as to the

sentence that he will receive in the event that he is subsequently successfully prosecuted for the offence, save that the sentence should be within the relevant statutorily-prescribed range.” The CA further agreed with the High Court in *Ding Si Yang v PP and another appeal* [2015] 2 SLR 229 that “little weight should be given to the expectations of one who deliberately flouted the law and later found the expected costs or consequences were worse than anticipated.” In *Pua Om Tee v PP and another appeal* [2022] SGHC 116, the High Court held at [79] that “accused persons generally could not argue that they had a “legitimate expectation” as to the sentencing framework that would be applicable to them. Little weight ought to be given to the expectations of a person who flouts the law and later finds out that the expected costs or consequences are worse than anticipated. The only legitimate expectation that accused persons could rely on here was that they would be sentenced within the statutorily prescribed range.”

52 The Defence’s submission that the Accused should be sentenced in accordance with the “sentencing landscape” before the 2006 amendment to the EA is therefore misconceived. In any case, other than *Seow Wei Sin*, which has been distinguished, the Defence has not cited any other case where a non-custodial sentence had been meted out against a NS defaulter.

53 In view of the above and given that the Accused had claimed trial to the EA charge, I am unable to see any mitigating factor in the present case which would warrant any downward adjustment to the starting point sentence.

The IA Charges

54 I agree with the Prosecution’s sentencing position with respect to the 3 charges under the IA proceeded with for the following reasons:

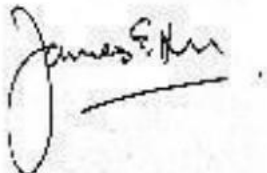
PP v Yao Zhi Hai Edmond

- (a) the similar charges TIC;
- (b) the Accused's plea of guilt;
- (c) the unreported precedents referred to by the Prosecution.

55 The Defence has also not challenged the Prosecution's sentencing position in respect of these 3 charges.

Sentence Imposed

56 The total sentence is therefore **36 months imprisonment and \$3,000 fine in default 12 days' imprisonment.**



James Elisha Lee
District Judge



Deputy Public Prosecutors Tay Jia En and Clara Low (Attorney-General's Chambers)
for the Public Prosecutor;
Mr Sunil Sudheesan and Ms Joyce Khoo (Quahe Woo & Palmer LLC) for the
Accused.