**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2025] SGHC 22**

Magistrate's Appeal No 9100 of 2024/01

Between

Oh Hin Kwan Gilbert

… *Appellant*

And

Public Prosecutor

… *Respondent*

---

# JUDGMENT

---

[Criminal Procedure and Sentencing — Sentencing — Principles]
[Criminal Procedure and Sentencing — Sentencing — Appeals]

## TABLE OF CONTENTS

# Oh Hin Kwan Gilbert
# v
# Public Prosecutor

**[2025] SGHC 22**

General Division of the High Court — Magistrate's Appeal No 9100 of 2024/01
Dedar Singh Gill J
1, 28 October, 8 November 2024

10 February 2025 Judgment reserved.

**Dedar Singh Gill J:**

1 This is an appeal against the decision of the District Judge (the "DJ") in *Public Prosecutor v Oh Hin Kwan Gilbert* [2024] SGMC 30. The Appellant, Mr Oh Hin Kwan Gilbert (the "Appellant"), a 46 year-old Singapore citizen, was a Director-General at the Ministry of Foreign Affairs ("MFA").[1] He pleaded guilty to an offence under s 182 of the Penal Code 1871 (2020 Rev Ed) ("Penal Code") for giving false information which he knew to be false to the Deputy Secretary (Management) of the MFA. The Appellant consented to two charges being taken into consideration for the purposes of sentencing and was sentenced to one week's imprisonment. Being dissatisfied with the DJ's decision, he appeals against his sentence. For the reasons set out below, I dismiss the appeal.

---

[1] Statement of Facts dated 17 April 2024 ("SOF") at para 1.

**Background facts**

2 On 12 January 2023, the Appellant contacted his colleague, Mr Dion Loke Cheng Wang ("Mr Loke"). Mr Loke was attached to the Singapore embassy in Beijing, China. The Appellant falsely told Mr Loke that the parents of a Chinese diplomat, who was his friend, wanted to have "something in a package" sent to the Appellant.[2] He asked Mr Loke to have the package conveyed from Beijing to Singapore *via* the diplomatic bag service.[3] In truth, the Appellant had agreed to help his friend, Ms Jiang Si, bring her watches from China to Singapore as a personal favour.[4] Ms Jiang Si was a Chinese national.[5] Even though Ms Jiang Si was not a diplomat,[6] the Appellant told Mr Loke that "his friend" was one as he thought that Mr Loke would be more likely to agree to his request.[7]

3 Mr Loke agreed to the Appellant's request. The Appellant provided Mr Loke's residential address in Beijing to Ms Jiang Si, who arranged for a sealed package to be delivered to Mr Loke. The package contained 21 luxury watches, a ring and about seven children's books. All of these items belonged to Ms Jiang Si and her partner. At the material time, the Appellant was not aware of the number of watches or the exact contents of the package.[8]

---

2 SOF at para 2.

3 SOF at para 2.

4 SOF at para 3.

5 SOF at para 3.

6 SOF at para 3.

7 SOF at para 3.

8 SOF at para 4.

4 On 17 January 2023, Mr Loke took a flight from China to Singapore. Mr Loke did not arrange to have the package dispatched to Singapore through the diplomatic bag service as it was suspended at the time. Instead, he carried the sealed package in his personal luggage.[9] When Mr Loke was stopped by officers from the Immigration and Checkpoints Authority for a bag screening, the sealed package was found and opened. The luxury watches were discovered therein. Mr Loke told the officers that he did not know what the package contained, that he had received it from a Chinese diplomat, and that he was carrying it back for the Appellant.[10] The matter was referred to the Singapore Police Force.

5 The MFA was subsequently informed of the incident. On the morning of 19 January 2023, the Deputy Secretary (Management) of the MFA, Mr Ong Eng Chuan (the "Deputy Secretary"), told the Appellant to provide a written account of the circumstances in which Mr Loke had brought the package and the watches into Singapore.[11] The Appellant was concerned about the possibility of disciplinary action being taken against him and resolved to tell the MFA that the watches belonged to his father, thinking that this narrative was more likely to attract the MFA's leniency than if he told the truth.[12] He spoke to his father about the incident and informed him that he intended to tell the MFA the following: (a) the watches belonged to his father; and (b) the latter had asked the Appellant to assist him in bringing the watches into Singapore.[13]

---

9 SOF at para 5.

10 SOF at para 6.

11 SOF at para 7.

12 SOF at para 8.

13 SOF at para 8.

6 On 19 January 2023 at 6.32pm, the Appellant e-mailed the Deputy Secretary and provided the latter with information which he knew to be false. In this e-mail, the Appellant averred that the watches carried into Singapore by Mr Loke belonged to his father, and that his father had requested for the Appellant's help in bringing the watches into Singapore.[14] In providing this false information to the Deputy Secretary the Appellant knew that he would likely cause the Deputy Secretary to omit to look further into the circumstances in which he had asked Mr Loke to have the package brought into Singapore, which the Deputy Secretary ought not to omit if he knew of the true state of facts.[15] These facts form the basis of the charge under s 182 of the Penal Code (the "Proceeded Charge") against the Appellant.

7 On the same day, the Corrupt Practices Investigation Bureau ("CPIB") began investigations into the case. In his first statement to the CPIB, the Appellant said that his father had asked for his help in bringing his watches from China to Singapore.[16] While the Statement of Facts does not disclose when the first statement was recorded from the Appellant, the Prosecution clarified (and the Defence accepted) in the proceedings below that the first statement was recorded from approximately 12.00am until 4.50am on 20 January 2023.[17] At around 10.25am on 20 January 2023, the Appellant gave a second statement to the CPIB where he admitted that: (a) Ms Jiang Si had requested for his assistance in bringing the watches into Singapore; and (b) his father was not involved in the matter.[18]

---

14 SOF at para 9.

15 SOF at para 10.

16 SOF at para 12.

17 Record of Appeal ("ROA") at p 29.

18 SOF at para 12.

8 The Appellant pleaded guilty to the Proceeded Charge and consented to two further charges being taken into consideration for the purposes of sentencing (collectively, the "TIC Charges"):[19]

(a) The first charge, under s 417 of the Penal Code, related to cheating the MFA sometime in December 2022 by dishonestly concealing the fact that a package containing boxes of Panadol that was to be sent to Mr Loke in Beijing from Singapore *via* the diplomatic bag service was instead intended for a personal acquaintance of the Appellant and not Mr Loke ("First TIC Charge").[20]

(b) The second charge, under s 417 read with s 116(1) of the Penal Code, related to abetting the cheating of the MFA on 12 January 2023 by instigating Mr Loke to dispatch a package containing luxury watches from China to Singapore *via* the diplomatic bag service by dishonestly concealing the fact that the package belonged to and was intended for someone else other than Mr Loke ("Second TIC Charge").[21] This was a charge under s 417 read with s 116(1) of the Penal Code since the cheating offence was not ultimately committed in consequence of the abetment.[22]

## The parties' positions below

9 In the proceedings below, both the Prosecution and the Defence took the position that a non-custodial sentence was appropriate in the circumstances.

---

19 ROA at pp 65–66 at para 4.

20 ROA at p 8.

21 ROA at p 9.

22 ROA at p 66 at para 4(b).

10 The Prosecution submitted that a fine of $6,000 to $9,000 should be imposed. This was largely because the Appellant had pleaded guilty[23] and his lie had caused "little, if any," appreciable harm.[24] The Appellant's lie did not appear to have wasted investigative resources since he told the truth to the CPIB within 24 hours.[25] Further, the Appellant's lie did not result in him "avoiding consequences" for the offending acts as the CPIB had commenced its investigations on the same day.[26]

11 The Defence took the position that a fine of less than $5,000 was appropriate[27] on account of the Appellant's remorse, plea of guilt, cooperation with the authorities, and the fact that he was unlikely to reoffend as his misconduct was highly out of character.[28] The Appellant did not lie to evade criminal prosecution as he did not know that the CPIB was investigating the matter at the material time.[29] The Defence also claimed that the Appellant faced crushing punishment due to the "irreparable damage" to his career and the fact that his personal reputation had been "irrevocably tarnished" due to the "public nature" of the present case.[30]

---

23 ROA at p 96 at para 7.

24 ROA at pp 94–95.

25 ROA at p 94.

26 ROA at p 94.

27 ROA at p 154.

28 ROA at pp 156–160.

29 ROA at p 162.

30 ROA at p 162.

**Decision below**

12 In sentencing the Appellant, the DJ considered *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447 ("*Koh Yong Chiah*"), where the High Court opined (at [50]) that if "appreciable harm may be caused by the s 182 offence, the court should, as a starting point, impose a custodial term". The DJ took the view that the Appellant's falsehood was made to thwart the MFA's internal investigations and was designed to mislead and disrupt the Deputy Secretary's internal investigations into the incident.[31] She found that while no actual harm resulted from the Appellant's false statement, appreciable potential harm had arisen.[32] A custodial sentence was justified as the falsehood resulted in serious *potential* consequences to the integrity of the Public Service and the MFA domestically and internationally:[33]

> (a) The falsehood sought to undermine and hinder the internal investigations undertaken by a public institution. Such internal investigations are integral to the maintenance of public trust and confidence in the Public Service as they serve as critical mechanisms for detecting, addressing, and preventing misconduct. Accordingly, where a falsehood seeks to hinder this process even temporarily, it has the potential to diminish the credibility of the public institution and the public's trust in the Public Service as a whole.[34]
>
> (b) The falsehood *could* have allowed the Appellant's attempted abuse of the diplomatic bag service to persist undetected, which had

---

31 ROA at p 83 at para 42.

32 ROA at pp 81 and 83 at paras 39 and 42.

33 ROA at p 85 at para 48.

34 ROA at p 84 at paras 45–46.

> broader consequences for the MFA. It was undisputed that the Appellant's attempted abuse of the diplomatic bag service was likely to cause harm to the MFA's reputation. If the attempted abuse of the MFA's diplomatic bag service for a foreign national who sought to circumvent oversight by the authorities was left *unchecked*, it had the potential to affect trust in Singapore's international relationships and cause grave embarrassment to the MFA.[35]

13 The serious potential consequences to the integrity of the Public Service and the MFA domestically and internationally justified a custodial sentence as a starting point. While the falsehood had only been maintained for a short duration, the public interest and general deterrence had to be accorded paramount consideration.[36] The DJ also made the following observations on the potential harm caused by the falsehood:

> (a) Even though both parties submitted that the falsehood only pertained to the concealment of the true ownership of the items, this did not change the gravamen of the charge as the Appellant nonetheless knew that the falsehood would likely cause the Deputy Secretary to omit probing further into the incident.[37]
>
> (b) The DJ also rejected the argument that the falsehood would have been inconsequential as it nonetheless revealed the attempted misuse of the diplomatic bag service. The falsehood sought to characterise the entire incident in a vastly different light, namely, as an innocuous act by the Appellant to help his father transport personal items. However, the

---

35 ROA at p 85 at para 47.

36 ROA at p 85 at para 48.

37 ROA at p 83 at para 43.

> truth was that he did so at the behest of a foreign national who, as the Appellant accepted, wanted to avoid the hassle of being questioned by the authorities.[38]

14 The DJ opined that even if she were wrong in her assessment of the harm engendered by the Appellant's offence, a custodial sentence was nonetheless merited on account of his high culpability.[39] The Appellant's culpability was borne out by the following points. First, his deception was conscious and deliberate as he knew of the falsity of his statement.[40] Second, the falsehood arose in connection with a distinct underlying predicate offence of abetment of cheating, which is a serious criminal offence.[41] Third, the Appellant offended out of self-interest.[42] Fourth, he had taken active steps to bolster the deception by relaying to his father the precise falsehood he intended to convey.[43] Fifth, the Appellant proceeded to actively reassert the falsehood in his first statement to the CPIB nearly six hours later.[44]

15 The DJ then balanced these factors against: (a) the Appellant's early plea of guilt; and (b) the fact that the falsehood had been recanted 16 hours after it was first made.[45] However, the following purported mitigating factors were not meaningful considerations in assessing the Appellant's culpability: (a) the character references of the Appellant; (b) the Appellant's years of service to the

---

38 ROA at pp 83–84 at para 44.

39 ROA at p 86 at para 49.

40 ROA at p 86 at para 50.

41 ROA at p 86 at para 50.

42 ROA at p 86 at para 51.

43 ROA at p 87 at para 52.

44 ROA at p 87 at para 53.

45 ROA at p 88 at paras 54–55.

MFA; and (c) the "irreparable damage" caused to the Appellant's career and reputation.[46]

16 The DJ also distinguished the case of *Public Prosecutor v Bernard Lim Yong Soon* [2014] SGDC 356 ("*Bernard Lim*"), which both parties had relied on in their submissions. The DJ did not find *Bernard Lim* to be a useful comparator as the offending act in *Bernard Lim* was committed to cover up a prior impropriety that was not criminal in nature.[47] This was unlike the present case, where the false information arose in connection with a distinct underlying predicate offence of abetment of cheating. The potential harm in the present case was much greater than that in *Bernard Lim*.[48]

17 Taking into account her finding that the custodial threshold had been crossed and the Appellant's plea of guilt, the DJ imposed a term of one week's imprisonment.[49]

## The parties' cases

### *The Appellant's case*

18 The Appellant claims that the sentence of one week's imprisonment is manifestly excessive. He alleges that in imposing this sentence, the DJ failed to properly appreciate the facts before her and exercised her discretion contrary to principle or law.[50] The Appellant provides three reasons for this.

---

46 ROA at pp 88–90 at paras 56–59.

47 ROA at p 91 at para 61.

48 ROA at pp 90–91 at paras 60–62.

49 ROA at pp 91–92 at para 63.

50 Appellant's Written Submissions dated 20 September 2024 ("AWS1") at para 5.

19 First, the DJ wrongly concluded that appreciable potential harm had arisen from the Appellant's false statement.[51] Second, the DJ erred in her analysis of the aggravating factors which, in her view, necessitated a custodial sentence on account of the Appellant's high culpability.[52] Third, the DJ should have relied on the decision in *Bernard Lim*, which is a relevant sentencing precedent that supports the imposition of a non-custodial sentence.[53]

20 The Appellant thus invites this court to set aside the DJ's sentence of one week's imprisonment and substitute it with a non-custodial sentence.[54] During the hearing before me on 1 October 2024 and in his further written submissions, the Appellant raised the following additional arguments:

(a) The Prosecution's position on appeal is inconsistent with its position in the court below.[55] The Prosecution's initial view on the suitability of a non-custodial sentence reflects the fact that it is in the public interest for the Appellant to receive a non-custodial sentence. Further, the Prosecution has not provided any explanation as to why it has changed its sentencing position on appeal.[56]

(b) The Prosecution's position on appeal is inconsistent with its plea agreement with the Appellant, where the Prosecution had agreed to seek a fine of $6,000 to $9,000 if the Appellant pleaded guilty to the s 182 charge before the trial dates were fixed and consented to the two TIC

---

51 AWS1 at paras 14–23.

52 AWS1 at paras 24–30.

53 AWS1 at paras 31–36.

54 AWS1 at para 6.

55 Minute Sheet dated 1 October 2024 ("Minute Sheet 1") at p 7.

56 Minute Sheet 1 at p 7.

Charges being taken into consideration for the purposes of sentencing (the "Plea Agreement").[57] While there was some disagreement as to the nature of the Plea Agreement during the hearing on 1 October 2024, the Prosecution eventually agreed with the Appellant's characterisation of the Plea Agreement.[58] The Appellant argues that he has been prejudiced by the Prosecution's change in position on appeal, which is at odds with the Plea Agreement, as he had refrained from introducing additional facts to the statement of facts on account of the Plea Agreement.[59]

(c) Even if a custodial sentence is warranted in the present case, the court should impose a short detention order ("SDO") pursuant to s 348 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC").[60]

***The Prosecution's case***

21 In response, the Prosecution takes the position that the DJ cannot be faulted for her assessment of the relevant sentencing factors, and for finding that the custodial threshold had been crossed. Further, the sentence of one week's imprisonment is not manifestly excessive.[61] While the Prosecution did not seek a custodial sentence in the proceedings below, it submits that it is not precluded from defending the DJ's sentencing decision if the decision is legally sound and reasonably defensible.[62]

---

57 Appellant's Further Written Submissions dated 8 November 2024 ("AWS2") at para 5(a).

58 Respondent's Further Submissions dated 8 November 2024 ("PWS2") at para 2(b).

59 Minute Sheet 1 at p 6.

60 AWS2 at paras 14–17.

61 Respondent's Written Submissions ("PWS1") at para 4.

62 PWS1 at para 20.

22 The Prosecution contends that the DJ did not err in: (a) assessing the harm caused by the offence;[63] (b) assessing the Appellant's culpability;[64] (c) distinguishing the present case from that of *Bernard Lim*;[65] and (d) declining to place weight on the factors raised in the Appellant's mitigation.[66]

23 The Prosecution also raises the following arguments in its further submissions:

(a) While the Prosecution adopted a different sentencing position in the court below as to whether the custodial threshold had been crossed, it reviewed the DJ's grounds of decision and did not find any error which warranted appellate intervention.[67] The custodial sentence imposed by the DJ should not be overturned on appeal, even though a sentence of a fine would also be defensible.[68]

(b) The fact that the Appellant had considered the Prosecution's sentencing position in electing to plead guilty is irrelevant to the determination of this appeal. The Prosecution relies on the decision in *CRH v Public Prosecutor* [2024] 1 SLR 998 ("*CRH*") to argue that the court is not bound by the parties' positions on the appropriate sentence to be imposed. Even if the Appellant relied on the Prosecution's sentencing position when deciding to plead guilty or in making

---

63 PWS1 at paras 22–31.

64 PWS1 at paras 38–45.

65 PWS1 at paras 46–49.

66 PWS1 at paras 50–55.

67 PWS2 at para 2(a).

68 PWS2 at para 2(a).

"strategic decisions", this had no bearing on the DJ's determination of the appropriate sentence.[69]

**Issues to be determined**

24 In my view, the following issues arise for my determination:

(a) Whether the court should accord weight to the Prosecution's position in the court below that a fine should be imposed instead of a period of imprisonment.

(b) Whether the DJ erred in concluding that appreciable potential harm had arisen from the Appellant's falsehood.

(c) Whether the DJ had correctly concluded that the Appellant's culpability was high.

(d) Whether the DJ erred in rejecting *Bernard Lim* as a sentencing precedent.

(e) Whether an SDO should be imposed.

**The applicable sentencing framework**

25 The crux of this appeal relates to the application of the sentencing guidelines laid down in *Koh Yong Chiah* for offences under s 182 of the Penal Code. I, therefore, briefly set out the High Court's guidance in *Koh Yong Chiah*.

26 In determining the appropriate sentence for an offence under s 182 of the Penal Code, the court will first determine whether, as a starting point, the

---

69 PWS2 at paras 4–9.

custodial threshold is crossed. Thereafter, the court will consider other relevant sentencing factors to determine if the starting point should be departed from and what the appropriate quantum of fine and/or length of imprisonment should be: *Koh Yong Chiah* at [49] and [56].

***The custodial threshold and appreciable harm***

27 Determining whether the custodial threshold has been crossed is essentially dependent on the degree of harm caused or likely to be caused: *Koh Yong Chiah* at [50]. If *appreciable* harm may be caused by the s 182 offence, the court should impose a custodial term as a starting point. Several additional points should be noted. First, the harm must be causally connected to the provision of the false information – the only relevant harm is the harm caused by the provision of the false information: *Koh Yong Chiah* at [51(a)]. Second, the harm must be more than *de minimis*. Thus, unless otherwise proved, misleading investigative authorities for a few hours or even a day or two may not, on the facts, have the potential to occasion sufficient harm to justify a custodial term as the starting point: *Koh Yong Chiah* at [51(b)]. However, this is merely a starting point. A custodial sentence may well be justified even where the harm is *de minimis* if the offender's culpability is high: *Koh Yong Chiah* at [53]. Third, harm encompasses both actual and *potential* harm. The fact that the harm did not eventuate because the lie was detected fast enough should not detract from a custodial sentence if the potential for harm was real and significant: *Koh Yong Chiah* at [51(c)]. Fourth, potential harm can usually be assessed with reference to the duration that the falsehood was maintained. *Generally*, if the falsehood was recanted quickly, appreciable harm is unlikely to be caused: *Koh Yong Chiah* at [51(d)]. Fifth, the inquiry of whether "appreciable harm" had arisen is not a test that can be applied with scientific precision, especially where the court is required to assess the potential

consequences which could have ensued from the false information. The sentencing court must exercise its discretion on the facts of each case. The sentencing guidelines in *Koh Yong Chiah* are not meant to restrict the court's discretion in sentencing: *Koh Yong Chiah* at [51(e)].

***Other sentencing factors***

28 Once the court has determined whether a custodial sentence should be imposed as a starting point, it should then consider other factors to determine if the starting point should be departed from and what the appropriate quantum of fine and/or length of imprisonment should be: *Koh Yong Chiah* at [56]. In *Koh Yong Chiah*, the court accepted (at [43] and [56]) that the factors which are relevant in assessing the level of culpability of the offender include:

(a) Whether the offender knew or merely believed that the statement was false.

(b) Whether the giving of false information was pre-meditated or planned, or whether it was simply spontaneous.

(c) Whether active, deliberate or sophisticated steps were taken by the offender to bolster the deception and boost the chances of hoodwinking the public authorities.

(d) The motive of the offender in giving the false information.

29 With these principles in mind, I turn to consider the DJ's application of *Koh Yong Chiah* in the present case.

**Issue 1: Whether the court should accord weight to the Prosecution's position in the court below that a non-custodial sentence should be imposed**

30 Before I turn to the substance of the Appellant's appeal against his sentence, I address the preliminary question of whether the Prosecution's inconsistent positions at first instance and on appeal have any bearing on whether the sentence imposed by the DJ should be varied. The Appellant argues, on the strength of *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 ("*Janardana*"), that it is an open question as to whether a plea agreement between the Prosecution and an accused person has any impact on the court's decision on the appropriate sentence to impose.[70] In this connection, the Appellant highlights that the Prosecution's position on appeal is inconsistent with its position in the court below, where it said that a fine was warranted as "little, if any, appreciable harm" had arisen from the Appellant's lie.[71] He argues that the Prosecution has not provided satisfactory reasons for the change in its stance on appeal.[72] Ultimately, he claims that this court should "accord due weight" to the following two factors when determining the appropriate sentence in the present case:[73]

(a) First, the Appellant alleges that the Prosecution's own position in the lower court was that it would be in line with the public interest for the Appellant to be sentenced to a fine, and this court should "accord

---

70 Minute Sheet 1 at p 6.

71 AWS2 at para 7.

72 AWS2 at para 7.

due weight" to the Prosecution's position when determining the appropriate sentence.[74]

(b) Second, the Appellant also claims that this court should accord due weight to the Plea Agreement when determining the appropriate sentence.[75] The Appellant acted in reliance of the Plea Agreement as he would have been "more proactive in [reflecting] the relevant facts [within] the [statement of facts]" if there had not been such an agreement.[76] As a consequence of the Plea Agreement, the material facts and circumstances were not as comprehensively ventilated in the proceedings below as they may otherwise have been.[77]

31 The Prosecution's response to these arguments is two-fold. First, it maintains that it had good reasons for changing its sentencing position on appeal. While it took a different view from the DJ in the court below on whether the custodial threshold had been crossed, it has adopted its present position on appeal as it did not find any error in the DJ's decision which would warrant appellate intervention.[78] Second, any reliance that the Appellant placed on the Plea Agreement is irrelevant to the determination of this appeal.[79] The Prosecution relies on *CRH* in support of its second argument.[80]

---

74 AWS2 at para 1(a).

75 AWS2 at para 8.

76 Minute Sheet 1 at p 6.

77 AWS2 at para 8.

78 PWS2 at para 2(a).

79 PWS2 at paras 4–9.

80 PWS2 at para 5.

32 In my judgment, the Appellant's reliance on *Janardana* is misconceived. Chief Justice Sundaresh Menon made two observations in *Janardana*. First, the court opined (at [24]) that when the Prosecution changes its position in respect of the sentence sought at first instance and then on appeal in a material way, it should articulate and explain its reasons for doing so. Second, the court stated (at [25]) that it is an open question as to whether the Prosecution may subsequently change its stance on sentencing on appeal if it has determined at first instance that it is in line with the public interest to submit for a lower sentence as part of the process of plea bargaining. The court observed that the resolution of this issue in a future case would likely involve a balancing of various interests and, in this context, it would be important for the Prosecution's change in position to be carefully explained (at [25]).

33 The Appellant's full argument on this issue has been reproduced above (at [30]). The nub of the Appellant's argument is that this court should "accord due weight" to the Prosecution's sentencing position at first instance[81] and the Plea Agreement[82] when determining the appropriate sentence in the present case. As this is the *only* argument mounted by the Appellant in relation to this issue on appeal, I need only consider this singular argument to determine this issue. I have no hesitation in rejecting the Appellant's argument for the following reasons. First, nothing in the passages that the Appellant cites supports his argument. Second, plea agreements are only made between the Prosecution and the Defence. The court is not a party to such agreements. Third, the Appellant's argument goes against the settled position that sentencing is within the court's purview, and any representation by the Prosecution on its own sentencing position has no bearing on the sentence which *the court* may impose:

---

81 AWS2 at paras 1(a) and 7.

82 AWS2 at para 8.

*CRH* at [38(b)]. Fourth, the Appellant's argument would impermissibly fetter the discretion of the court. Fifth, the Appellant himself does not dispute the legal position in *Janardana* (at [12]) that sentencing is a matter for the court and it is ultimately for the court to assess what sentence will be just in the circumstances. Accordingly, this argument fails.

**Issue 2: Whether the DJ erred in concluding that appreciable potential harm had arisen from the Appellant's falsehood.**

34 I next address the Appellant's arguments on the substantive appeal against the sentence imposed by the DJ. The Appellant alleges that the DJ erred in finding that appreciable potential harm had arisen from the Appellant's false statement.[83] In this context, the Appellant raises three sub-arguments:

(a) The DJ should not have relied on the Appellant's attempted misuse of the diplomatic bag service to conclude that appreciable potential harm had arisen from his false statement.[84] Any attempted misuse of the diplomatic bag service is not causally connected to the Appellant's provision of false information, which relates to the ownership of the watches that Mr Loke carried into Singapore *via* his personal luggage.[85] The Appellant's false information did not contribute or relate to his attempted misuse of the diplomatic bag service.[86] The court should only consider the gravity of the predicate offence when assessing the offender's culpability at the second stage of the *Koh Yong Chiah* framework, and not the level of harm caused by the s 182 offence

83 AWS1 at paras 14–23.

84 AWS1 at para 19.

85 AWS1 at para 19(b).

86 AWS1 at para 19(b).

(at the first stage of the *Koh Yong Chiah* framework).[87] It would be unfair for the gravity of the predicate offence to be considered at both the first and second stage of the inquiry.[88] The only harm that can be causally connected to the Appellant's false statement regarding the ownership of the watches is the wastage of investigative resources.[89] The Appellant's false information could not have caused the predicate offence of the attempted misuse of the diplomatic bag service.[90]

(b) The DJ was wrong to have concluded that falsehoods which thwart the internal investigations of public institutions, even temporarily, have the potential to diminish the public's trust in the Public Service as a whole.[91] The DJ had erred by analysing the Appellant's false statement in a vacuum. In particular, the Appellant contends that the DJ failed to give due weight to the fact that the Appellant had voluntarily recanted the false statement within 16 hours, which is a short duration.[92]

(c) The DJ placed undue weight on the need for deterrence. Deterrence must be applied with due regard for proportionality between the gravity of the offender's conduct and the punishment imposed. If the DJ had correctly concluded that the Appellant's false statement caused

---

87 AWS2 at paras 11(b) and 11(c).

88 AWS2 at para 11(c).

89 AWS2 at para 12.

90 AWS2 at para 12.

91 AWS1 at paras 20–21.

92 AWS1 at paras 21(b)–21(c).

little, if any, appreciable potential harm, the appropriate and proportionate punishment would have been a non-custodial sentence.[93]

35 On the other hand, the Prosecution argues that the DJ did not err in her assessment of the potential harm caused by the offence.[94] The Prosecution raises the following arguments:

(a) The DJ correctly considered that the Appellant's falsehood was intended to disrupt the MFA's internal investigations.[95] Given the importance of such investigations to the discipline of the Public Service, the Appellant's falsehood had the potential to diminish the credibility of the MFA and the Public Service if his lie had been taken at face value and secured him lenient treatment as intended.[96] The DJ correctly concluded that this was one aspect of the potential harm that had arisen from the Appellant's lie.[97]

(b) The DJ was entitled to consider that the potential harm to the public interest would be more pronounced when high-ranking public servants, such as the Appellant, sought to subvert internal investigations in the Public Service.[98]

(c) The DJ had correctly considered the potential harm occasioned by the Appellant's falsehood, which was causally connected to the lie.

---

93 AWS1 at para 23.

94 Minute Sheet 1 at p 13.

95 PWS1 at para 23.

96 PWS1 at para 23.

97 PWS1 at paras 23–24.

98 PWS1 at para 24.

While the falsehood did not cause the Appellant's attempted misuse of the diplomatic bag service, the potential harm which arose out of the lie was that it had impeded the detection of the Appellant's attempted misuse of the diplomatic bag service and it is important for such acts to be detected.[99] The Appellant's falsehood may have permitted the predicate offences to go undetected, which carried the risk of causing embarrassment to the MFA and impinging on trust in Singapore's international relationships.[100] The Appellant's lie was intended to divert the MFA's focus away from his attempted misuse of the diplomatic bag service.[101] Further, the falsehood had a material impact on the MFA as it was not aware of the Appellant's attempted misuse of the diplomatic bag service when it asked the Appellant to provide his account of events.[102] The falsehood was calculated to paint the Appellant's actions in a sympathetic light, with a view to ensuring that the MFA would not look further into the circumstances in which Mr Loke had carried the package into Singapore.[103] If the Appellant's lie had not been uncovered and the MFA ceased its investigations, his attempted misuse of the diplomatic bag service may not have come to light.[104]

(d) The DJ had given sufficient weight to the fact that the Appellant recanted his lie shortly after the offence.[105] This factor was not

---

99 PWS1 at paras 25–26; Minute Sheet 1 at p 13.

100 PWS1 at para 25.

101 PWS1 at para 28.

102 PWS1 at para 29.

103 PWS1 at para 30.

104 PWS1 at para 30.

105 PWS1 at para 32.

determinative of whether the Appellant's lie had caused appreciable harm.[106] The DJ had accounted for the Appellant's change in position in assessing the *length* of the imprisonment term to be imposed.[107]

(e) The DJ could consider the circumstances surrounding the TIC charges in determining the harm caused by the s 182 offence. Such circumstances form the backdrop of the proceeded charge.[108]

36 In her analysis of the appreciable potential harm that had arisen due to the falsehood, the DJ explicitly considered two factors: (a) the potential impact on the public's trust in the Public Service that arises from any hindrance to the Public Service's internal investigative process *per se*, which is amplified by the Appellant's senior position in the Public Service (the "First Harm Factor");[109] and (b) the consequence of such hindrance, which is that the falsehood could have allowed the Appellant's attempted misuse of the diplomatic bag service to persist *undetected*, which had the potential to reduce trust in Singapore's international relationships and embarrass the MFA (the "Second Harm Factor").[110]

37 As a preliminary matter, it is apposite to set out the true nature of the Appellant's attempted misuse of the diplomatic bag service. While the Appellant describes this as an innocuous act of assisting a "close family friend with the dispatching of personal items" without gaining any financial benefit,[111]

---

106 PWS1 at para 33.

107 PWS1 at para 34.

108 PWS1 at para 37.

109 ROA at p 84 at paras 45–46.

110 ROA at pp 84–85 at para 47.

111 AWS1 at para 19(e).

this characterisation is not entirely accurate. It is not disputed that the Appellant had attempted to misuse the diplomatic bag service to assist his friend, who is a foreign national. Further, the Appellant's counsel in the court below revealed that, in so far as the Second TIC Charge was concerned, the Appellant had attempted to misuse the diplomatic bag service to allow his friend to avoid "questions" from a foreign authority:[112]

> Court: Help me understand what you mean by this submission because I'm trying to understand how the bringing of watches belonging to a friend as a personal favour from China to Singapore could have been of such urgency that Mr Oh felt it necessary to seek the use of the diplomatic bag service to convey them.
>
> Shashidran: … I don't think there is any dispute between the prosecution and defence that my client did not have any benefit from this exercise. He did not---these watches don't belong to him. Did not get any financial benefit from this. His friends were living in Singapore. The watches were in their home in China. They wanted to bring the watches back to Singapore.
>
> *But usually, if you go through Chinese authorities, they will check. They'll ask a lot of questions. They wanted to avoid that.* And these watches belong to them. There's no issue of ownership. *But the question is they wanted to avoid the hassle of too many explanations.* And they were in Singapore. So, in that sense, he was doing them a favour.
>
> [emphasis added]

The Prosecution did not challenge the Appellant's motive for attempting to misuse the diplomatic bag service in the proceedings below. It is thus apparent that, in so far as the Second TIC Charge is concerned, the Appellant had attempted to misuse the diplomatic bag service to assist a foreign national in

---

112 ROA at p 42.

circumventing the checks put in place by a foreign authority. For completeness, I note that the Appellant's counsel revealed in the proceedings below that the Appellant had a different motive for committing the offence in the First TIC Charge:[113]

> Shashidran: I just want to add one more thing, which I should have said earlier, Your Honour. … The 1st charge, Your Honour, you see it involves the Panadol that was to be sent. Does Your Honour have that?
>
> Court: Yes. And that is in relation to the 1st charge.
>
> Shashidran: So, Your Honour, at that time, my understanding is China ran out of stock for a lot of medication, including Panadol. So, when his friend requested that they send some Panadol to help family members, he just did that to assist them. Again, no benefit to him. In his mind, he was just doing them a favour.
>
> I've explained to Your Honour why there were some necessity or urgency is because of that shortfall of Panadol in China at that material time, Your Honour. Again, I don't believe the prosecution disputes this. I think this is something we've even stated in our representations.

38 I now turn to the substantive consideration of the second issue. In my view, the DJ was entitled to conclude that the Appellant's lie had caused appreciable potential harm.

39 First, the Appellant takes the position that by relying on the Appellant's attempted misuse of the diplomatic bag service, the DJ had considered harm which was not causally connected to the provision of false information. I disagree. This misunderstands the Second Harm Factor cited by the DJ. The appreciable potential harm which had arisen was not the Appellant's attempted

---

113 ROA at pp 43–44.

misuse of the diplomatic bag service *per se*, but rather the *risks* engendered by the possibility that the Appellant's attempted misuse and prior misuse of the diplomatic bag would *remain undetected* by the authorities due to the Appellant's lie. While the Appellant claims that his falsehood only relates to the ownership of the watches which Mr Loke carried into Singapore (and not the Appellant's attempted misuse of the diplomatic bag service), the lie cannot be analysed *in vacuo*. By averring that he had merely transported his *father's* watches into Singapore, the Appellant would have given the MFA a reason to refrain from probing further into the matter and discovering the true *extent* of his attempted misuse of the diplomatic bag service. As rightly noted by the DJ,[114] there is a qualitative difference between: (a) attempting to misuse the diplomatic bag service to allow one's parent to transport their personal items to Singapore; and (b) attempting to misuse the diplomatic bag service to allow a *foreign national* to transport their personal items to Singapore *to avoid the hassle of providing too many explanations and answering questions from a foreign authority*. It is presumably for this reason that the Appellant believed the MFA would be "more likely to be lenient" in disciplinary proceedings if he lied.[115] The Appellant's lie thus sought to prevent the MFA from discovering the true circumstances surrounding the seizure of the watches and, by extension, the true nature of his attempted misuse of the diplomatic bag service. The true nature of the Appellant's attempted misuse and prior misuse of the diplomatic bag service could well have gone *undetected* due to such a lie, which in turn had the potential to impinge on trust in Singapore's international relationships if such misuse was allowed to *remain undetected*. This was the potential harm that the

---

114 ROA at pp 83–84 at para 44.

115 SOF at para 8.

DJ had relied upon and, in my judgment, she cannot be faulted for doing so as such potential harm results from the Appellant's false statement.

40 I pause briefly to address the Appellant's argument relating to the double-counting of the predicate offence in the first and second stages of the *Koh Yong Chiah* framework. The Appellant contends that the Second Harm Factor cannot be considered in the first *and* second stages of the *Koh Yong Chiah* framework as it would essentially penalise the Appellant twice for the same fact.[116] I am unconvinced by this argument. The two stages of the *Koh Yong Chiah* framework serve different purposes. The first stage of the *Koh Yong Chiah* framework relates to the issue of whether the custodial threshold has been crossed. The second stage relates to the following: (a) whether this starting point should be departed from; and (b) what the appropriate *quantum* of fine and/or *duration* of imprisonment should be. The fact that an offender's predicate offence has been considered in the first stage (in which the court assesses whether the custodial threshold has been crossed as a starting point) does not affect its relevance for a *different* purpose under the second stage, where it is considered when assessing the *duration* of the appropriate imprisonment term. The offender is thus not doubly penalised for the same fact.

41 In the event that I am wrong in the preceding analysis, I note that the DJ made the alternative finding that the Appellant's high culpability alone would have justified a custodial sentence even if the harm engendered by the offence was *de minimis*.[117] This coheres with *Koh Yong Chiah*, where the court opined (at [53]) that in some cases where the harm is *de minimis* but the offender's culpability is high, a custodial sentence could well be justified on the facts. I see

116 AWS2 at para 11(c).

117 ROA at p 86 at para 49.

no basis to fault the DJ's analysis and agree that the Appellant's high culpability warrants a custodial sentence even if the harm engendered by his offence is *de minimis*. For completeness, and for reasons that will be elaborated on below (at [44]–[52]), I am also of the view that the DJ had correctly assessed the Appellant's culpability.

42 Second, the Appellant contends that in considering the First Harm Factor, the DJ failed to consider the Appellant's retraction of his false statement within 16 hours and, as a corollary, the fact that the MFA's investigation had not actually been thwarted by the lie.[118] In my judgment, this argument does not take the Appellant far. The fact that the MFA's investigation was not actually hindered by the lie is fortuitous. As explained in *Koh Yong Chiah* (at [51(c)]), the fact that harm did not eventuate because the offender was simply lucky does not detract from the justifiability of a custodial sentence if the *potential* for harm to be caused was real and significant. While the court in *Koh Yong Chiah* opined that appreciable harm is *generally* unlikely to be caused if the falsehood was recanted quickly, this is not an absolute principle. In the present case, the DJ had expressly considered the Appellant's retraction of his lie within 16 hours.[119] However, she was of the view that this did not detract from the justifiability of a custodial sentence in the light of the serious *potential* consequences of the Appellant's falsehood to the integrity of the Public Service, which was amplified by dint of his high rank as a Director-General.[120] Given the DJ's conclusion on the serious *potential* consequences to the integrity of the Public Service, she was justified in concluding that the custodial threshold had been crossed notwithstanding the short duration in which the falsehood had been

---

118 AWS1 at para 21(c).

119 ROA at p 85 and 88 at paras 48 and 55.

120 ROA at pp 84–85 and 88 at paras 46, 48 and 55.

maintained. It bears emphasis that the test for "appreciable harm" is not capable of being applied with scientific precision. This is especially in cases where the court is required to assess the potential harm which *could have* ensued from the provision of false information, but did not on the facts: *Koh Yong Chiah* at [51(e)].

43 Third, the Appellant submits that, since the DJ incorrectly found the Appellant's lie to have caused appreciable potential harm, she consequently erred in concluding that general deterrence was the dominant consideration. As the DJ cannot be faulted for finding that there was appreciable potential harm (see [38]–[42] above), the Appellant's argument falls away.

**Issue 3: Whether the Appellant's culpability was high**

44 Next, I consider whether the DJ made any error in her analysis of the aggravating factors which, in her view, necessitated a custodial sentence on account of the Appellant's high culpability. In this context, the Appellant raises the following arguments:

(a) The Appellant's knowledge and cognisance of his deception is already reflected in the Appellant's s 182 offence and cannot be an aggravating factor.[121]

(b) The fact that the Appellant had lied out of self-interest does not justify the imposition of a custodial term as offenders who are charged under s 182 of the Penal Code will have "invariably" made their false statements out of self-interest in "most cases".[122]

---

121 AWS1 at para 27.

122 AWS1 at para 27.

(c) The false information had not arisen in connection with a predicate offence of abetment of cheating as the false information merely related to the ownership of the watches. Further, the Appellant was not aware of any investigations by the CPIB concerning the predicate offence when he made his false statement. He did not provide false information for the purpose of evading *criminal* prosecution for the predicate offence. Additionally, the gravity of the Appellant's predicate offence is attenuated by the fact that he had attempted to assist a close family friend with the transportation of personal items, without gaining any financial benefit.[123]

(d) While the Appellant informed his father of the precise falsehood that he intended to convey and had reasserted his falsehood in his first statement to the CPIB, this is counterbalanced by his voluntary retraction of the falsehood within 16 hours. The short duration for which the falsehood was maintained carried mitigating, rather than aggravating, weight.[124]

(e) Any remaining aggravating factors do not warrant the imposition of a custodial sentence as they are outweighed by the following mitigating factors: (i) the Appellant's early plea of guilt; (ii) his full cooperation with the authorities; (iii) the Appellant's voluntary retraction of his false statement at an early juncture; and (iv) the fact that the Appellant gained no financial advantage from the offence.[125] Further,

---

123 AWS1 at para 28.

124 AWS1 at para 29.

125 AWS1 at para 30.

the Appellant's character references suggest that he has exceptional rehabilitative potential.[126]

45 On the other hand, the Prosecution raises the following contentions:

(a) The DJ had correctly considered the fact that the Appellant offended out of self-interest.[127] Not every offender under s 182 offends out of self-interest. Such offenders may lie to shield another person from investigation or prosecution.

(b) The DJ was correct to consider the Appellant's knowledge of the falsehood as an aggravating factor. Not every offender under s 182 *knows* of the falsity of his statement – the provision also criminalises the provision of information that one *believes* to be false.[128]

(c) The DJ was entitled not to give much weight to the Appellant's ignorance of any criminal investigations at the time of the falsehood. The Appellant knew he would be subject to disciplinary action if his attempted abuse of the diplomatic bag service came to light. Accordingly, he must have known that his attempted misuse of the diplomatic bag service was impermissible.[129] It is irrelevant whether he also recognised that his actions gave rise to criminal liability as ignorance of the law is no defence.[130]

---

126 AWS1 at para 30.

127 PWS1 at para 40; Minute Sheet 1 at p 14.

128 Minute Sheet 1 at p 14.

129 PWS1 at para 43.

130 PWS1 at para 43.

(d) The DJ rightly concluded that the offence had been premeditated and not "reactionary".[131] The Appellant had more than half a day to compose his account to the MFA. He informed his father of what he intended to say to the MFA. By so doing, the Appellant intended to fortify his lie by ensuring that his father would corroborate his falsehood if called upon to do so.[132] The Appellant had also actively reasserted this lie in his first CPIB statement.[133]

(e) The Appellant's character references and his record of public service are at odds with the facts before the court, which disclose prior acts of dishonesty by the Appellant. These include the TIC Charges as well as his lie to Mr Loke that the package originated from the parents of a Chinese diplomat and was meant for the Appellant. Further, as the Appellant's offence was not an isolated one, it cannot be inferred from his past record that his offending had been out of character. Even if there had been such evidence, it would be displaced by the need to achieve general deterrence in the light of the appreciable potential harm which had arisen from the offence.[134]

(f) Any potential impact that the sentence would have on the Appellant's career and reputation is the natural consequence that follows when a person commits an offence. Such a consequence is not relevant to sentencing and the DJ was justified in not placing much weight on this factor.[135]

---

131 PWS1 at para 44.

132 PWS1 at para 44.

133 Minute Sheet 1 at p 14.

134 PWS1 at para 53.

135 PWS1 at para 54.

46 In my view, the DJ made no error in her finding that the Appellant's culpability was high.

47 First, the DJ could consider the Appellant's knowledge of the falsity of his statement. Taking such a factor into account is not double counting as s 182 encompasses offenders who *know* or *believe* that the information they have provided is false. In other words, not every offender under s 182 will possess actual knowledge of the falsity of his statement. This was a fact that the court in *Koh Yong Chiah* had explicitly stated would be relevant when assessing an offender's level of culpability (at [43(a)]).

48 Second, the Appellant knowingly made the false statement as he was concerned about the possibility of disciplinary action being taken against him, which may have affected his career progression.[136] It is evident that the Appellant was motivated by self-interest when he made the false statement. I reject the Appellant's argument that less weight should be given to this factor because self-interest is invariably the reason for making a false statement in most cases. There are other plausible motives for giving a false statement which the court in *Koh Yong Chiah* (at [43(e)]) alluded to, including possible innocuous or altruistic intentions. The Appellant's self-serving motive of reducing any impact on his career progression is therefore a relevant factor in assessing his culpability.

49 Third, the Appellant argues that the false information had not arisen in connection with a predicate offence as his lie merely related to the ownership of the watches in question. This argument does not withstand scrutiny for the reasons given above (at [39]). The fact that the Appellant did not convey the

---

136 SOF at para 8.

falsehood for the purpose of avoiding or evading *criminal* prosecution for this predicate offence is also not material. The Appellant knew that his actions were nonetheless prohibited, as evidenced from his concern about being subject to disciplinary proceedings. His lie was designed to conceal this forbidden conduct by interfering with the *MFA's internal investigations*. The Appellant knew that his lie would likely cause the Deputy Secretary to omit to look further into the circumstances in which the Appellant had asked Mr Loke to have the package brought into Singapore.[137]

50 Fourth, I agree with the DJ that the Appellant's act of speaking to his father about the incident before giving the false statement to the MFA was particularly aggravating. This was an active and deliberate step taken to bolster his deception, in anticipation of the possibility that the Appellant's father might have to corroborate his lie. The Appellant acted with premeditation and went further to reassert his falsehood in his first statement to the CPIB nearly six hours later.

51 In my view, the abovementioned factors taken together justify the imposition of a custodial sentence.

52 The Appellant raises other mitigating factors, including: (a) his early plea of guilt; (b) his voluntary retraction of his false statement at an early juncture; (c) his character references; (d) his cooperation with the authorities; and (e) the fact that he gained no financial advantage or benefit from his offence. However, these factors do not detract from the appropriateness of a custodial sentence. The first two factors were appropriately considered by the DJ in

---

137 SOF at para 10.

determining the *length* of the custodial sentence.[138] The DJ was also entitled to place little weight on the Appellant's character references as they were at odds with the facts before the court (see below at [62]). Further, while the Appellant's lack of financial benefit may be a mitigating factor, it is of "very little weight": *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [3]. I am also unable to agree that the Appellant had *fully* cooperated with the authorities as he had actively reasserted his lie to the CPIB in his first statement. To my mind, the DJ was correct in her assessment of the purported mitigating factors in the present case.

**Issue 4: Relevance of *Bernard Lim* as a sentencing precedent**

53 I turn next to the relevance of *Bernard Lim* as a sentencing precedent. The Appellant submits that the DJ should not have rejected the decision in *Bernard Lim* as a relevant sentencing precedent which supported the imposition of a non-custodial sentence. While the offender in *Bernard Lim* did not make his false statement in relation to any predicate offence, the weight to be placed on the Appellant's predicate offence is moderated by the fact that he had tried to assist a close family friend with the transportation of personal items without any financial benefit.[139] The Appellant also highlights the following differences between the present case and *Bernard Lim*: (a) the Appellant pleaded guilty at the earliest available opportunity whereas the offender in *Bernard Lim* claimed trial; (b) the Appellant recanted his false statement even earlier than the offender in *Bernard Lim*; and (c) the Appellant only faces one s 182 charge whereas the offender in *Bernard Lim* faced two such charges.[140] During oral arguments

138 ROA at p 88 at paras 54–55.

139 AWS1 at para 35(a).

140 AWS1 at para 35(b).

before me, the Appellant also argued that *Bernard Lim* should not be distinguished on the basis of the offender's lack of a predicate offence as the issue of whether an offender is charged with a predicate offence is influenced by the exercise of the Prosecution's discretion.[141]

54 On the other hand, the Prosecution concurs with the DJ's decision distinguishing the present case from *Bernard Lim*. The offender in *Bernard Lim* was not liable for any predicate offence and no harm had arisen from the relationship that the offender had tried to conceal.[142] The court in *Bernard Lim* had scrutinised the facts and concluded that there had been no predicate offence.[143] In contrast, the Appellant committed the s 182 offence to shield himself from disciplinary action for his prior act of misusing the diplomatic bag service, which is a criminal offence.[144] The potential harm and culpability of the Appellant in the present case are thus greater than that in *Bernard Lim*. Further, the offender in *Bernard Lim* did not face two s 182 charges for the purposes of sentencing as he had been acquitted of the second charge.[145]

55 In my view, the DJ rightly distinguished the case of *Bernard Lim* on the basis that there was no underlying predicate offence that the offender in *Bernard Lim* would have been liable for. The offender in *Bernard Lim* was not prosecuted for any offence other than two s 182 charges under the Penal Code (Cap 224, 2008 Rev Ed) and had been acquitted of one of these charges. This was a material factor in the court's decision to not impose a custodial sentence

---

141 Minute Sheet 1 at p 5.

142 PWS1 at para 48.

143 Minute Sheet 1 at p 14.

144 PWS1 at para 49.

145 Minute Sheet 1 at p 15.

(at [101]). This can be contrasted with the present case, where the Appellant's lie was meant to conceal a predicate offence in the form of the Second TIC Charge. Further, *Bernard Lim* effectively involved one s 182 charge for the purposes of sentencing as the offender had been acquitted of the second s 182 charge (see *Bernard Lim* at [81]).

56 The Appellant contends that the Prosecution in *Bernard Lim* had simply chosen to exercise its discretion to not charge the offender with a predicate offence of corruption and a corruption charge *could* have been brought against the offender. I am unable to accept this argument. The court in *Bernard Lim* opined that there was no underlying predicate offence which the offender would have been liable for (at [101]). Ultimately, the offender in *Bernard Lim* had *not* been prosecuted for corruption offences. It is unduly speculative for the Appellant to say that the offender in *Bernard Lim could* have been charged for corruption, especially since the court noted that the authorities had conducted an extensive investigation but had not prosecuted the offender for any offence other than the s 182 offences (at [101]). I am thus unconvinced by the Appellant's argument.

57 In addition, the court in *Bernard Lim* considered that the tender price for the bicycles quoted by the vendor was reasonable (at [109]–[110]) and the offender did not prevent rival bids for the tender (at [112]–[114]). The actual and potential harm caused in *Bernard Lim* was thus lower. In my view, the abovementioned factors indicate that the harm and culpability in the present case differ from that in *Bernard Lim* and the DJ was justified in distinguishing the latter. The Appellant views his culpability to be similar to that of the offender in *Bernard Lim*. I do not share his view as the Appellant's early plea of guilt and comparatively earlier retraction of his lie are outweighed by the gravity of his predicate offence. Further, the offender in *Bernard Lim* did not

have any other charges that were taken into consideration for the purposes of sentencing, whereas the Appellant has two TIC Charges.

**Issue 5: Whether a short detention order should be imposed**

58 Finally, the Appellant takes the view that even if a custodial sentence is warranted, an SDO should be imposed instead of an imprisonment term.[146] The Appellant's petition of appeal did not include this argument. Section 378(6) of the CPC prohibits the Appellant from relying on a ground of appeal that is not set out in the petition of appeal, except with the permission of the appellate court. However, the Prosecution indicated at the hearing before me that it would not object to the Appellant's reliance on this argument.[147] In the circumstances, I allowed the Appellant to rely on this additional ground of appeal.

59 The Appellant submits that an SDO should be imposed instead of an imprisonment term for several reasons. First, the Appellant's offence is out of character as he would never deliberately harm Singapore's interests or international relations.[148] The Appellant had mistakenly attempted to assist a close family friend with the dispatching of personal items without gaining any financial benefit. In this context, the Appellant raises various character references which attest to his good character. Second, the Appellant's actions reflect his genuine contrition.[149] The Appellant had voluntarily retracted his false statement within a day, fully cooperated with the authorities, pleaded guilty at the earliest possible opportunity, and had voluntarily tendered his resignation from the MFA. Third, the Appellant is not at risk of reoffending and

146 Minute Sheet dated 28 October 2024 ("Minute Sheet 2") at p 4.

147 Minute Sheet 2 at p 4.

148 AWS2 at para 16(a).

149 AWS2 at para 16(b).

intends to explore how he can put his qualifications to use in serving Singapore's interests in a different capacity and role.[150] In sum, the Appellant claims that he would benefit from an SDO in the light of the nature of his offence, his "good character", and his "exceptional rehabilitative potential".[151]

60 The Prosecution did not address this additional ground of appeal in its written submissions or during the oral hearing before me.

61 In determining whether an SDO is appropriate in any given case, the court will consider the type of offender and the nature of the offence in question: *Chen Song v Public Prosecutor and other appeals* [2024] SGHC 129 ("*Chen Song*") at [155]. Where the nature of the offence is so serious based on the level of harm caused and/or the culpability of the offender such that the sentencing principles of deterrence and retribution come to the fore, a term of imprisonment may be more appropriate than an SDO: *Chen Song* at [156].

62 In my judgment, an SDO is not appropriate for two reasons. First, I am not persuaded that the present offence was out of character. While the Appellant raises various character references to support his argument that the present offence was an aberration, this ignores his various instances of dishonesty in the present case. In addition to lying to the Deputy Secretary about the provenance of the watches, the Appellant had also lied to Mr Loke when he told the latter that the *parents of a Chinese diplomat* wanted to send the package to *the Appellant*.[152] He lied as he thought it would make Mr Loke more amenable to

---

150 AWS2 at para 16(c).

151 AWS2 at para 17.

152 SOF at paras 2–3.

his request to transport the package through the diplomatic bag service.[153] The First TIC charge reveals an earlier instance of similar deception, where the Appellant deceived the MFA into transporting boxes of Panadol *via* the diplomatic bag service by dishonestly concealing the fact that they were meant to be sent to his personal acquaintance instead of Mr Loke. In the circumstances, I do not think that the Appellant's practice of deception on members of the Public Service to serve his personal ends can be said to be out of character.

63 Second, the Appellant's plea of guilt and claims of remorse are outweighed by the nature of the present offence. Where the nature of the offence is so serious based on the level of harm caused and/or the culpability of the offender such that the sentencing principles of deterrence and retribution come to the fore, a term of imprisonment may be more appropriate than an SDO: *Chen Song* at [156]. These two elements (*ie*, harm and culpability) also feature in the sentencing framework for s 182 offences and have been analysed above. The DJ had correctly concluded that the Appellant's lie caused "appreciable potential harm" as it had caused serious potential consequences to the integrity of the Public Service and the MFA, both domestically and internationally. Further, the culpability of the Appellant is also high in the light of the fact that: (a) he had offended deliberately and consciously; (b) he had offended out of self-interest; (c) he had taken active steps to bolster his deception; and (d) he had reasserted his falsehood to the authorities.

64 For the reasons above, it would have been inappropriate for the DJ to impose an SDO. There was no error on the DJ's part in sentencing the Appellant to a term of imprisonment.

---

153 SOF at para 3.

**Conclusion**

65 In conclusion, it is my opinion that the DJ analysed the facts and relevant case law correctly. I therefore dismiss the appeal and uphold the DJ's sentence of one week's imprisonment.

Dedar Singh Gill
Judge of the High Court

Tan Chee Meng SC, Vishi Sundar and Jayakumar Suryanarayanan
(WongPartnership LLP) for the Appellant;
Tan Pei Wei (Attorney-General's Chambers) for the Respondent.