

Public Prosecutor v Sustrisno Alkaf - [2006] SGDC 182 (30 August 2006)

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[\[2006\] SGDC 182](#)

Suit No: DAC 27341/2006, MA 102/2006

Decision Date: 30 Aug 2006

Court: District Court

Coram: Danielle Yeow Ping Lin

Counsel: Yap Teck Chuan (AVA Inspector) for the prosecution, Accused in person

Judgment

30 August 2006

District Judge Danielle Yeow Ping Lin

The Charge and Sentence

1. The Accused pleaded guilty to one charge of transiting in Singapore, onboard the vessel Sumber Alam Indragiri II, from Sumatra to Batam Island, with scheduled species, ie 2520 heads of live South Asian Box Turtles (*Cuora amboinensis*), without a valid CITES (Convention on International Trade in Endangered Species) export permit issued by the competent authority of Indonesia, in contravention of s 5(1) of the Endangered Species (Import and Export) Act 2006, punishable under s 5(2) of the Act.

2. He was sentenced the Accused to 5 months imprisonment and a fine of \$20,000 in default 2 months imprisonment. The Accused, being dissatisfied with the sentence imposed, has appealed against it.

Prescribed Punishment

3. The offence is punishable with a fine up to \$50,000 for each scheduled species in transit in Singapore (not to exceed in the aggregate \$500,000) or imprisonment up to 2 years or both.

The Facts

4. The Accused, a 58 Indonesian national, was the captain of the vessel Sumber Alam Indragiri II which was on transit in Singapore from Sumatra to Batam Island. In response to a complaint by a local non-governmental organization, officers from the Agri-Food and Veterinary Authority (“AVA”) carried out an inspection on the said vessel when it arrived in Singapore on 13 June 2006.

5. Onboard the vessel, the officers found a total of 5,420 soft shell turtles, out of which there were 2,520 South Asian box turtle (*Cuora amboinensis*), which are scheduled species under

the Endangered Species (Import & Export) Act. These are classified under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") as an Appendix II species, ie threatened species.

6. The accused had loaded the soft shell turtles in Sumatra. He was in transit in Singapore at the Jurong Fishing Port, Singapore, in order to off-load 2,900 non-scheduled species of soft shell turtles to importers in Singapore. Thereafter, the accused was to ship the 2,520 scheduled species of South Asian box turtles to Batam, enroute to Hong Kong. However, the accused did not possess a valid CITES export permit and instead produced a fake CITES export permit originating from Indonesia for 1,800 Asian box turtles.

Mitigation

7. The Accused is a first offender. He promised not to repeat the offence. He informed the court that he was supporting 5 children and pleaded for leniency.

Prosecution's Submissions on Sentence

8. The AVA prosecutor, Mr Yap Teck Chuan made both oral and written submissions on sentence, seeking a deterrent custodial sentence and fine.

9. The prosecution pointed out that the Act was enacted in order to give effect to CITES, which Singapore is a party to. The main purpose of this Convention is to protect certain species of wild fauna and flora against over-exploitation through international trade. One of the biggest threats to the survival of many endangered species is the illegal trade in wildlife species.

10. The amended Act came into effect in March 2006. Mr Yap submitted that one of the main changes was to allow enforcement action to be taken against illegal transshipment through Singapore of CITES-protected wildlife species.

11. The amendments greatly enhanced the penalties prescribed against illegal trade in wildlife through Singapore (ie the import, export or re-export of scheduled species prescribed in s 4 of the Act). This was in order to ensure an effective deterrent against illegal trafficking and trade of CITES-protected species. The same level of punishment was prescribed for offences under s 5 of the Act.

12. Mr Yap submitted that illegal trade in endangered species has not subsided over the years. Referring to a set of sentencing precedents, Mr Yap noted that there were many cases involving trade in endangered wildlife species. Despite the AVA having publicized most of the cases of illegal import of scheduled species, such illegal transactions continue to occur. He sought a deterrent sentence in order to prevent other like-minded individuals from committing similar offences.

13. In his written submissions, Mr Yap further argued that such offences are difficult to detect, particularly in transit cases. Singapore is one of the busiest ports in the world and is an attractive transshipment hub. He noted that Singapore is often criticized for by local and foreign non-government organizations for being lax in enforcing wildlife laws and for being a hub for illegal wildlife trade. Mr Yap submitted that Singapore's international image is

damaged by such criticisms, particularly with regard to wildlife from biodiversity-rich neighbouring countries.

Decision and Sentencing Considerations

14. The offence in question was prescribed in s 5(1) read with s 5(2) in the Act, which was recently amended and came into effect in March 2006. The term “import” is defined in the Act as “to bring or cause to be brought into Singapore by land, sea or air any scheduled species other than any scheduled species in transit in Singapore” : s 2(1). The Act further states:-

“(2) For the purposes of this Act, a scheduled species shall be considered to be in transit if, and only if, it is brought into Singapore solely for the purpose of taking it out of Singapore and —

(a) it remains at all times in or on the conveyance in or on which it is brought into Singapore;

... ”

15. In this case, the accused had transited in Singapore with the scheduled species within the meaning of s 5(1) read with s 2(2)(a). He conveyed the scheduled species into Singapore by sea, solely for the purpose of taking it out of Singapore to Batam, enroute to Hong Kong. The scheduled species had remained at all times in or on the vessel on which it was conveyed into Singapore, prior to them being detected by AVA officers. Having considered the facts as revealed in the statement of facts which was admitted without qualification by the accused, I was satisfied that the charge was supported by the statement of facts and accordingly convicted the accused.

Approach in sentencing

16. In determining the appropriate sentencing option, this Court was guided by the approach discussed in *PP v Tan Fook Sum* [\[1999\] SGHC 80](#). After discussing the content and impact of the sentencing principles of retribution, deterrence, prevention and rehabilitation, the High Court said:

“The difficulty caused by the multiplicity of operative principles is that it makes conflicts inevitable. A complicating factor is that the principles have to be applied not only in determining which of several options made available by the legislature is the suitable punishment but also in determining whether a number of options can be combined together. ... Moreover, after the proper option has been determined, it seems the foregoing principles must again be applied in order to ascertain what the amount of fine or the term of imprisonment should be. In the view of Tan Yock Lin, there is a better way:

*... what will facilitate more rational and informed sentencing is recognition that there is a dichotomy between public interest and aggravating or mitigating factors. **Generally speaking, only the public interest should affect the type of sentence to be imposed while only aggravating or mitigating circumstances affect the duration or severity of the sentence imposed.**”*

(emphasis added)

Public interest

17. On the question of the appropriate sentence, the first and foremost consideration in the balancing process is the question of public interest: see *Sim Gek Yong v PP* [1995] SGHC 27, *PP v Tan Fook Sun* [1999] SGHC 80 and *Ong Ah Tiong v PP* [2004] SGHC 11. This is sometimes stated as the deterrence principle and is often equated as the need for the protection of the public in appropriate cases.

18. In determining whether the considerations of public interest called for the offence to be dealt with by a fine, a custodial sentence or some other sentencing option, the court would consider the nature and gravity of the offence, its immediate consequences, other general detrimental repercussions to the public and State and the prevalence of the offence.

19. In this regard, the sentencing judge is duty-bound to properly take into account Parliament's intent behind the offence creating provision and the punishment prescribed by law: see *Farida Begam d/o Mohd Artham v PP* [2001] 4 SLR 601, and to administer the applicable law rigorously in accordance with the legislative intent as can be inferred from the statutory changes.

20. The amended Endangered Species (Import and Export) Act came into effect on 1 March 2006. The policy intent was stated by the then Minister of State for National Development, Mr Heng Chee How, during the Second Reading of the Bill. The Minister said at *Hansard*, 17 January 2006 Col 2184:

"Singapore is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which regulates trade in wildlife. Parliament passed the Endangered Species (Import and Export) Act (ESA) in March 1989 to give effect to CITES in Singapore. The Act was amended in 2002 to include a list of endangered species.

Since the last amendment, there have been substantive changes to the CITES enforcement obligations on member states and the interpretation of illegal trade. Thus, there is a need to update and realign the ESA to the changes in the CITES, and to enhance the deterrence against any illegal trade in wildlife through Singapore.

*... The Endangered Species (Import and Export) Bill would repeal the ESA and re-enact with amendments the ESA. The key features of the Bill are as follows: Firstly, the Bill will strengthen the Agri-Food and Veterinary Authority's (AVA) enforcement powers. **Changes will, for example, allow enforcement action to be taken against illegal transshipments through Singapore of CITES-protected wildlife species. Secondly, the Bill will raise the maximum level of penalties to ensure an effective deterrence against the illegal trafficking and trade of CITES-protected species. Thirdly, the Bill will update terms, definitions and provisions used in CITES, and align general provisions in the ESA with those in other relevant legislation.***

Sir, I will elaborate on the key features of the Bill.

Strengthening AVA's Enforcement Powers

First, on acting against illegal transshipments. Singapore is one of the busiest ports in the world and is an attractive transshipment hub. Currently, while the ESA empowers AVA to take action against illegal imports and exports of CITES-protected species, it is not specific about AVA's powers with regard to transshipments.

The Bill will empower AVA to investigate illegal transshipment or transit cases, and search, inspect, detain, seize or confiscate any illegal CITES-protected species.

This provision will be applicable to both travellers and cargoes passing through Singapore. It will enable AVA to act decisively upon receiving strong intelligence and evidence and tip-offs of illegal CITES-protected species being transshipped through Singapore and prevent Singapore from being used as a conduit for the smuggling of CITES-protected species

Sir, the Bill will also raise the maximum level of penalties to better reflect the severity of the offences and strengthen deterrence against illegal wildlife trade

...

Sir, in summary, the Endangered Species (Import and Export) Bill will strengthen deterrence and enforcement against illegal wildlife trade, and align the Endangered Species (Import and Export) Act to recent changes made to CITES.” (emphasis added).

21. It is also pertinent to note the Minister of State’s response to questions posed by Members of Parliament in relation to the bill. The Minister continued at *Hansard* , 17 January [2006 Col 2184](#):

“First of all, on the need to safeguard Singapore's reputation as an international centre for trade and as an international transshipment hub, I cannot agree more with the two Members. We want to remain a global centre for trade, commerce and transshipment, and we will do everything possible to promote this status. But, at the same time, we will not want this role of ours to be abused by those engaged in illegal activities, whether it is narcotics or illegal wildlife trade, because that damages us in a serious way. This Bill will go some way towards addressing this particular danger that we may face.”

22. Some observations can be drawn from the above extracts. Firstly, the illegal trade in endangered wildlife is an issue of grave international concern. As a responsible member of the international community, and a party to CITES, it is vital that the sentencing approach of this Court sufficiently acquits Singapore of her international obligations under CITES, which have been implemented domestically via the Act.

23. This sentiment was also expressed by the High Court in *PP v Kuah Kok Choon* [\[2000\] SGHC 244](#) at 30, which involved an offence of possession of scheduled species without an permit punishable under s 4(2) of the pre-amendment Endangered Species (Import and Export) Act (Cap 92A):-

“...a deterrent sentence had to be imposed to reflect how seriously Singapore regards its obligations under CITES. Singapore has committed itself to co-operating with other countries to preserve their endangered species and Kuah’s actions went against the spirit of that cooperation.”

24. Secondly, Parliament had specifically legislated against the transshipment of CITES protected species through Singapore and to prevent Singapore from being abused as a conduit for the smuggling of such species as such illegal activities “*damages [Singapore] in a serious way*”: see Hansard (cited above). This was evidently a grave concern and a harm which the Act was intended to guard against. The need to safeguard Singapore’s image and reputation as an international centre for trade and international transshipment hub is a highly material consideration. This is particularly when it relates to wildlife from biodiversity-rich neighbouring countries.

25. Finally, the penalties against illegal trade and trafficking in wildlife were significantly enhanced to better reflect the severity of the offences under the Act and strengthen deterrence against illegal wildlife trade. Previously a person convicted of an offence under s 4(3) of importing, exporting or re-exporting any scheduled species is liable to be sentenced to a maximum fine of \$5,000 or to maximum imprisonment of 12 months or both (maximum fine of \$10,000 for second or subsequent conviction).

26. Contrast this to the sentences prescribed under the amended Act:-

“... liable on conviction to a fine not exceeding \$50,000 for **each such scheduled species** (but not to exceed in the aggregate \$50,000) or to imprisonment for a term not exceeding 2 years or both.” (emphasis added): s 4(1) and s 4(2) (import, export, re-export or possession of scheduled species without a valid permit);

“... liable on conviction to a fine not exceeding \$5,000 for **each scheduled species** in transit in Singapore ... (but not to exceed in the aggregate \$500,000) or to imprisonment for a term not exceeding 2 years or both.” (emphasis added): s 5(2) (scheduled species in transit without a valid permit)

27. The maximum term of imprisonment for offences under s 4 was doubled while the maximum fine was increased to \$50,000 for **each scheduled species**. (NB. the maximum aggregate fine was increased to \$500,000, a hundred fold increase). The additional phrase “*each scheduled species*” did not appear in the pre-amended Act sentencing provision. The term “*scheduled species*” is in turn defined to mean “*any animal or plant... specified in the Schedule*”: s 2(1). The difference in the language employed is crucial as it indicates that the fine quantum is now determined on a per animal basis instead.

28. As stated by the then Minister of State during the Second Reading of the Bill:-

“*As the value of smuggled endangered wildlife can be very high, the current fine of \$5,000 is not an effective deterrent. So the Bill will increase the maximum penalty for illegal trafficking of endangered species from \$5,000 and/or a year's jail, to \$50,000 and/or two years' imprisonment. The fine is applicable to each CITES-protected animal or plant, or part thereof, involved in the offence, up to an aggregate maximum of \$500,000.*” (emphasis added).

29. Further on, in his response to questions by Members of Parliament during the Second Reading of the Bill, the then Minister of State clarified that:-

“Dr Amy Khor asked whether or not it would be on a per animal basis. It is actually on a per animal basis because, according to the interpretation, the word "species " would also relate to per animal.”

30. Following from that, the maximum aggregate fine in the present case, which involves the illegal transit of over 2150 turtles, is \$500,000. The high quantum of the fine is a vivid reflection of the gravity and seriousness of the offence and the underlying legislative policy. The court’s sentencing policy would have to coincide with the legislative policy. The approach was put succinctly by Moffitt P in *R v Lawrence & Ors* (1980) 32 ALR 72 at p 110 as follows:

“It is well recognised that the fixing by the legislature of a maximum sentence for a particular crime provides a legislative view of the seriousness of the crime in question. A legislative policy so indicated, as with any other legislative policy should guide the court in the determination of the appropriate sentence to be imposed in a particular case. In order to give effect to this policy it will normally be necessary to reserve the maximum for the more serious cases of the crime in question with the less serious cases being dealt with by imposition of a less penalty which pays due regard to the seriousness of the class of crime, so indicated by the legislature. If there is legislative amendment increasing the maximum sentence, this new view of the seriousness of the crime should be reflected in the sentence imposed.”

31. It would be remiss of this Court not to take all these above considerations into account when assessing the appropriate sentence in the present case.

32. In urging the court to impose a deterrent custodial sentence, the prosecution also submitted that there were a large number of such offences. However, apart from tendering a list consisting of six sentencing precedents, no actual figures or statistics were cited in support. As such, the court was ultimately not able to place much weight on the “prevalence of the offence” argument in the final analysis.

33. In my view, given the above public interest and policy considerations in punishing such offenders, as well as the need for individual and general deterrence, severe sentences are necessary to deter the accused and other like-minded individuals from committing similar offences in future. Those who are involved in illegal trafficking of endangered wildlife species, as in this case, should expect a severe sentence and in the present case, at the very least, to go to prison.

Proportionality

34. Having said that, in determining the quantum of the sentence, I was guided by the principle of proportionality. As explained by V.K. Rajah J in *Tan Kay Beng v PP* [\[2006\] SGHC 117](#) :-

“31 Deterrence must always be tempered by proportionality in relation to the severity of the offence committed as well as by the moral and legal culpability of the offender. It is axiomatic that a court must abstain from gratuitous loading in sentences. Deterrence, as a concept, has a multi-faceted dimension and it is inappropriate to invoke it without a proper appreciation of how and when it should be applied. It is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet

about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious. Deterrence, as a general sentencing principle, is also intended to create an awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders.

32 Deterrence however also has a more specific application. Specific deterrence is directed at persuading a particular offender from contemplating further mischief. This assumes that a potential offender can balance and weigh consequences before committing an offence. The deterrent function may therefore be weak or non-existent when formulating an appropriate sentence for mentally handicapped or unwell persons. In such cases, as well as instances when a court is persuaded that an offender is unlikely to re-offend, specific deterrence fails to qualify as a relevant consideration, let alone a crucial one.

33 In specific cases, even in the absence of a compelling need for specific deterrence, general deterrence could be the context in which stiff sentences are anchored, given the imperative of upholding law and public order. Granting that concerns of law and public order are indeed crucial considerations in sentencing, this alone however does not provide a licence for unreasonable or unreasoned sentences. There is in the final analysis, an overriding constitutional and public interest imperative warranting that individuals are not unfairly sentenced. All said and done, it would however be wrong to consider that the mandates of law and order on the one hand and the right of the offender to be fairly treated on the other are inimically irreconcilable. It is the duty and obligation of the sentencing judge to assess and balance these competing concerns and to strike an appropriate balance between the two.

34 In sentencing a particular offender, both general and specific deterrence must be scrupulously assessed and measured in the context of that particular factual matrix before deciding exactly how and to what extent each should figure in the equation. “

Relevant features

35. In determining the appropriate sentence, this Court considered the particular factual matrix and features of the present case.

36. Firstly, the accused's role was significant in what was a deliberate, planned and executed act. He was the captain of the vessel and had full control over it as it loaded the scheduled species in Sumatra before transiting in Singapore to off-load other non-scheduled species here. He even possessed and produced a fake CITES export permit originating from Indonesia, which unfortunately for him, failed to deceive the AVA officers. His role in transporting and conveying the scheduled species, and in producing a false Indonesian CITES export permit could hardly be described as peripheral.

37. Further, there was an extremely large number of South Asian box turtles involved, numbering over 2,525. It was a significant commercial operation and could not be viewed in the same way as for example, importation or transit on a small scale for private purposes.

38. The commercial value of the turtles was another factor in the consideration which in this case, was indicated by the prosecution to be in the region of \$10,000. As observed by the then Minister of State during the Second Reading of the Bill, the “ *smuggling of wildlife is second only to narcotics in terms of the profits they generate and is estimated at some US\$5 billion annually*”.

39. Successful illegal trade or trafficking in wildlife can be a highly lucrative and profitable venture. Taking into the commercial value of the turtles in the present case, the sentenced imposed, whether in terms of imprisonment or fines or both, has to be of a sufficient and appropriate degree in order to deter the accused and others from attempting such activities in the future. The additional imposition of a fine, in my view, operates as a particularly effective deterrent to counter the lure of the illicit monetary gains from such activities.

40. The present case concerned species which are classified in Appendix II of CITES. Species listed in Appendix I of the CITES are threatened with extinction while species listed in Appendix II are “threatened species” in that “ *although not necessarily now threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.* ” : Art II(2) CITES.

41. The different classification of the species does not in my view, render it any less imperative to conserve such species, nor in any way lessen the public interest in imposing a stiff sentence. The Act also does not draw any distinction between the two classifications in terms of the punishment prescribed. It is precisely to ensure that such species are not threatened with extinction that controls are placed on their trade. Their over-exploitation through illegal trading and trafficking can potentially cause grave and irreversible harm to the species as well as to the eco-systems which they inhabit. I pause here to note the observation by Member of Parliament, Dr Amy Khor, during the Second Reading of the Bill that “ *more than half of smuggled animals die. ... and the very act of removing them from their natural habitat damages the fragile ecosystem and threatens the species’ and other species’ existence.* ”

42. Ultimately, one of the biggest threats to the survival of many endangered species is the illegal trade in wildlife species. The more endangered a species is, the more it is coveted by traders and collectors. This can lead to a vicious cycle that could eventually result in its extinction.

43. In addition, as submitted by the prosecutor, such offences are difficult to detect and enforce against, especially in relation to the illicit trans-shipment of protected wildlife species. This is particularly so as Singapore is one of the world’s busiest port and is an attractive transshipment hub. Here, it was only due to timely information received by the AVA that their officers managed to detect the accused and the scheduled species. When offences are difficult to detect or investigate without information provided to the enforcement agencies (as in this present case), the Courts have usually imposed a substantial custodial sentence to meet the needs of general deterrence: see *Abu Syeed Chowdhury v PP* [2002] SGHC 14 , *Ng Yang Sek v PP* [1997] SGCA 37 , *Sim Bok Huat Royston v PP* [2001] SGHC 67 at 38, *Foo Siang Wah Frederick v PP* [1999] SGHC 74 at 58; *Chng Gim Huat v PP* [2000] SGHC 127 at 106; *Lim Hock Hin Kelvin v PP* [1998] SGCA 1 at 28.

44. In addition, I note that such illegal transit can pose considerable problems for the enforcement agency which has to ensure the welfare of the turtles and to arrange for the repatriation of the said turtles, in this case, by the shipping company.

Sentences imposed in past cases

45. I also considered the sentences imposed in earlier similar cases. A list of such cases has been provided by the prosecution in the exhibit marked “B”. They involve a single charge of

importation of scheduled species without a valid permit. The numbers of animals involved are considerably lower compared to the present, and range from thirty-five to just over a thousand. In all these cases, the prosecution had requested for a deterrent sentence. The court had imposed a custodial sentence ranging from 6 weeks to 3 months as well as the then maximum fine of \$5000.

46. In the reported decision of *PP v Kuah Kok Choon* [\[2000\] SGHC 244](#) (cited above), the offender, aged 22 years, was sentenced on appeal to the then maximum sentence of one year's imprisonment and fine of \$10,000, in default 6 months imprisonment (for a second or subsequent conviction) for possession of two Lear's Macaws, which are highly endangered species, and are scheduled species under the Act. The respondent in that case had claimed trial to the charge and was also a repeat offender.

47. While the present offence refers to one of transiting with scheduled species without a valid permit, I accept that the two offences are similar in nature, in that they represent different facets of illegal trade and trafficking in protected species. Hence, in assessing the appropriate sentence, it is useful to refer to sentences which have been imposed in the past for similar offences to determine the trend of sentencing policy, if any.

48. Having said that, I was mindful of the following passage in *Soong Hee Sin v PP* [\[2001\] SGHC 50](#) :-

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

49. Thus, the past cases can thus only operate as a guide or reference and not as a rigid or mathematical indication of the appropriate sentence in the present case. I note that past cases involving importation of a scheduled species without a valid permit have attracted sentences of imprisonment as well as the then maximum fine. This was the case even when the number of animals involved was low, eg 35 birds in the case of *PP v Usman Thalib* (DAC 20426/2003). Further, these were offences under the old Act which carried a much lower maximum sentencing range. As a general approach, one could justifiably expect sentences under the new enhanced sentencing regime to attract a considerably higher sentence.

Mitigating factors

50. Apart from the plea of guilt, there were minimal mitigating factors in this case. I took into account that the accused had pleaded guilty at the first instance. However, it is established that the weight to be attached to a plea of guilt would depend on the circumstances of the case. A plea of guilt would carry little weight if the prosecution has no difficulty in proving the charges: see *Xia Qin Lai v PP* [\[1999\] SGHC 232](#) ; *Sim Gek Yong v PP* [\[1995\] SGHC 27](#). The present case clearly falls within that category.

51. I also considered that this is the accused's first offence. In this regard, it is well-accepted that the lack of antecedents could only amount to a neutral factor in the face of the need for deterrence: *PP v Ng Tai Tee Janet* [2000] SGHC 285 ; *PP v Xia Qin Lai* [1999] SGHC 232 ; *Sim Gek Yong v PP* [1995] SGHC 27 ; *Lim Hock Hin Kelvin v PP* [1998] SGCA 1. Being a first offender does not necessarily entitle the accused to an automatic discount in sentencing as this have to be balanced against the wider public interest: *Sim Gek Yong v PP* [1995] SGHC 27 ; *Balasubramaniam Palaniappa Varyapuri v PP* [2002] SGHC 12.

52. There are strong public policy considerations to warrant a deterrent sentence in the present case. Thus, the accused's lack of antecedents did not sufficiently militate against the need to punish and deter the commission of such offences. Nevertheless, I did place some weight to his early plea of guilt and his lack of antecedents as it demonstrated his genuine remorse.

Sentence Imposed

53. In summary, in light of all the considerations enumerated above, I was of the view that the sentence imposed should ultimately function as an effective deterrent to prevent others from engaging in such activities through Singapore or to utilize Singapore as a transit point for illegal wildlife trade; that it sends a clear message to the international community on Singapore's commitment to co-operate with other countries to preserve their endangered or threatened species and to act against illegal wildlife trade; while at the same time, operate as a proportionate punishment for the accused's conduct in light of the circumstances of the case.

54. While I did not consider this to be a worst case which would warrant a sentence near the maximum range of the offence, the accused's culpability and the seriousness of the present offence could hardly be described as low, which would warrant a sentence close to the lowest end of the scale. After a careful assessment of all the circumstances of the case, the sentencing considerations discussed above, as well as the accused's clean record and mitigation plea, I sentenced him to 5 months imprisonment and a fine of \$20,000 in default 2 months.

55. The sentence of imprisonment of 5 months was less than half of the maximum imprisonment provided for. As for the fine of \$20,000, this was commensurate with the seriousness of the present case, bearing in mind the value of the turtles in question. It remained on the moderate spectrum of the scale bearing in mind that the maximum fine in the present case was a total aggregate fine of \$500,000. In my view, this was sufficient to meet the need for deterrence as well as to operate as a punishment proportionate to the circumstances of the case and the accused.

56. The accused has not paid the fine and is currently serving his sentence.