

Case Summary (English Translation)

HKSAR v 彭滿圓 (Pang Moon Yuen Garry) and Another

WKCC 928/2022; [2022] HKMagC 11

(West Kowloon Magistrates' Courts)

(Full text of the reasons for sentence in Chinese at

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=148457&currpage=T)

Before: Mr. Cheng Lim Chi, Magistrate

Dates of Trial: 1, 5-9, 13-16 September and 21 October 2022

Date of Sentence: 27 October 2022

Sentencing – sentencing considerations for offences of sedition – wantonly attacking judicial officers of different levels – uttering seditious words openly in court – necessary to impose deterrent sentence

Background

1. The first Defendant (“D1”) was charged with doing an act or acts with a seditious intention (namely with an intention to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; to raise discontent or disaffection amongst inhabitants of Hong Kong; and/or to counsel disobedience to law or to any lawful order), contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200) (Charge 1). Besides, D1 and the second Defendant (“D2”) were charged with uttering seditious words while sitting in on a case in a magistrates’ court, contrary to s. 10(1)(b) of the Ordinance (Charge 2). Both Defendants pleaded not guilty and were convicted of all charges after trial.

2. For the detailed facts of the case, see the verdict [2022] HKMagC 9 given by the Court on 27 October 2022.

Summary of the Court's reasons for sentence

A. Sentencing considerations for the offences of sedition

3. The Court agreed that the sentencing considerations involving the offence of incitement to secession under NSL 21 set out in *HKSAR v Ma Chun Man* [2022] HKCA 1151, para. 75 were applicable to the present case: (paras. 3-4)

- (a) the context in which the offence was committed, including the date, time, location, occasion and society's atmosphere at the material time and so on;
- (b) the *modus operandi*, including the ways, acts, wording, media or platform adopted;
- (c) the number of times and the duration of the incitement, and whether the acts were persistent;
- (d) the scale of the incitement;
- (e) whether the matter happened suddenly or was premeditated; if it was the latter, the scale and precision of the premeditation;
- (f) whether violence or threat of violence was involved; if so, the urgency and seriousness of the relevant violence or threat;
- (g) whether other people were involved in committing the crime together;
- (h) the group the incitement targeted, the size of the group and the potential influence on them;
- (i) whether or not the incitement actually succeeded and resulted in someone committing the offence of secession or any other offence, or the risk and imminence that such offences would happen;
- (j) the actual or potential influence that the offender had on society or a certain sector or area.

B. Sentencing for Charge 1

4. There were no sentencing guidelines for the offences of sedition and all depended on the circumstances of individual cases. Having taken

into account the following factors, the Court found that the gravity of the facts relating to Charge 1 warranted a deterrent sentence, and thus adopted a starting point of 10 months' imprisonment. (paras. 7-8)

- (a) D1 persistently made remarks publicly online to wantonly attack the judicial officers of different levels. His seditious acts seriously undermined the rule of law, disparaged the credibility of the judicial officers, and trampled on the dignity of the court, for which a deterrent sentence must be imposed.
- (b) The YouTube channel created by D1 was heavily viewed, with over 9,000 viewers on one occasion, and several thousand of viewers for the rest of his videos.
- (c) Among the viewers of the YouTube channel, some might mistakenly believe that what D1 said were the facts, and therefore developed prejudice against the judicial officers.

5. As D1 pleaded not guilty, showed no remorse and there were no mitigating grounds, D1 was sentenced to 10 months' imprisonment. (para. 8)

C. Sentencing for Charge 2

6. Having taken account of the following factors, the Court adopted a starting point of 3 months' imprisonment for Charge 2. (paras. 9-10)

- (a) After the magistrate had issued a warning, D1 and D2 still acted brazenly in court by uttering words to attack the magistrate. Their seditious words or utterances affected the judicial dignity and normal operations of the court.
- (b) Despite the short duration, where the case handled by the magistrate on that day was only temporarily affected, and there were only around a hundred people in the public gallery, sedition was an act of provoking others' emotions, and sedition committed under different circumstances would give rise to

varying degrees of risks.

(c) At that time, the magistrate was trying a case of social concern. D1 and D2 must be given a deterrent sentence for openly uttering seditious words in court.

(d) However, Charge 2 was a single incident, without premeditation.

7. D1 and D2 pleaded not guilty and showed no remorse. The Court could not find any ground that was sufficient to justify a reduction or suspension of sentence. Thus, in respect of Charge 2, D1 and D2 were each sentenced to 3 months' imprisonment. (paras. 10 and 12)

D. Conclusion

8. Having regard to the totality principle, the Court ordered that one month of the three months' imprisonment imposed on D1 in respect of Charge 2 to run concurrently with the sentence for Charge 1. Accordingly, the overall sentence on D1 was 12 months' imprisonment, whereas D2 was sentenced to 3 months' imprisonment. (paras. 11-13)

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