



Summary of Judicial Decision

Secretary for Justice v LHY (“the Respondent”) CAAR 10/2020; [2021] HKCA 155

Decision	:	Application for review of sentence allowed
Date of Hearing	:	8 January 2021
Date of Judgment	:	28 January 2021
Date of Reasons for Judgment	:	10 February 2021

Background

1. At around 9:54 p.m. on 7 October 2019, while the police were handling incidents of unlawful assembly and road blockage in Tuen Mun, some 30 to 40 people in black outfits blocked with bamboo sticks and various objects the fast lane of Castle Peak Road-San Hui, Tuen Mun near the junction with Tuen Mun Heung Sze Wui Road. Another group of people in black outfits advanced towards the slow lane, raising their hands to intercept vehicles for checking.
2. The Respondent, who was wearing a black shirt and pants, a black cap with a piece of black cloth wrapped around his face, and gloves, ran across a lane with a hammer (32 cm in length) in his hand. A police officer in pursuit of the Respondent shouted “Police! Don’t move!” When he almost caught up with the Respondent, the Respondent turned and raised the hammer to attack him. The police officer raised his hand to fend off the attack and was not hit.
3. The Respondent continued to flee. When the police officer caught up with him once again, the Respondent turned and raised the hammer again to attack him, hitting him on the right shoulder. He felt the pain but still managed to subdue the Respondent. After searching, the police officer found that there were items such as goggles, gas mask, swimming goggles, arm and calf armours, and helmet in the Respondent’s backpack.
4. The Respondent denied one count of “assaulting police officer in execution of duty” (contrary to section 63 of the Police Force Ordinance, Cap. 232). He was convicted after trial. The Respondent was 15 years of age at the material time and just turned 16 at the time of conviction.



Issues in dispute

5. Whether the magistrate had given sufficient regard to the sentencing norm for the offence and whether he had wrongly underjudged the gravity of the case.
6. Whether the magistrate's consideration of the probation order as the appropriate sentence was wrong in principle and manifestly inadequate.

Department of Justice's Summary of the Court's judgment

(Full text of the reasons for judgment of the Court of Appeal of the High Court (Chinese version only) at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=133529&QS=%2B&TP=JU)

7. The Court of Appeal (CA) reiterated that the offence of assaulting a police officer is a serious one and that the sentencing court should have regard to what acts a defendant has done and under what circumstances they have been done in the commission of the offence of assaulting a police officer (paras. 20-24).
8. The Respondent was obviously well prepared when he arrived at the scene of protest and road blockage with a hammer as well as other articles seized from him which were similar to those with which radical protestors were commonly equipped (para. 26).
9. In an attempt to evade arrest when pursued, the Respondent deliberately lifted the hammer twice to assault the police officer. Although the officer was not too seriously injured, the hammer weighing as much as it did was a lethal weapon and could cause death when used improperly. Such is the potential risk to which the sentencing court must not turn a blind eye. At a time when 30 to 40 people dressed in black were blocking roads and intercepting vehicles, the Respondent's act to avoid arrest and assault a police officer could have spurred or caused others in black outfits to join in an attempt to snatch the suspect and assault the police officer, resulting in a ripple effect of breaching the peace (paras. 27-28).
10. CA considered, given the particularly serious circumstances of this case, a deterrent sentence must be imposed. In short, for the offence of assaulting a police officer, a sentence of immediate imprisonment would generally be imposed to send a proper warning to deter others (paras. 30-32).



11. Although a magistrate has the discretion to impose upon a defendant a more lenient sentence where appropriate, for an individual case involving a serious offence and offending circumstances, the rehabilitative need of the offender is overridden and rendered insignificant by the need for a heavy and deterrent sentence in the light of public interest. Therefore, the sentence ought to strike a balance between the need for deterrence and the rehabilitation of the young offender (paras. 33-36).
12. It was observed that the Respondent failed to admit any faults at all, showed little perception and tried to downplay his culpability with excuses during the entire hearing and even sentencing before the magistrate. Given that the Respondent's mother could hardly restrain him, let alone fully co-operate with the probation officer to enforce the probation order which relies on the full co-operation of the Respondent, his family and the probation officer for its successful enforcement, a probation order is inappropriate and impracticable under the circumstances (para. 39).
13. The magistrate erred in the handling of factual basis of this case. In sentencing, he failed to fully consider the gravity of the offence and offending circumstances and attached too much weight to the Respondent's rehabilitation, contrary to the sentencing principles. In this case, the elements of punishment and deterrence ought to be given greater weight in sentencing (para. 42).
14. CA considered custodial sentence as appropriate in this case. The probation order was quashed and replaced with detention in rehabilitation centre (para. 44).

Prosecutions Division
Department of Justice
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