



### Summary of Judicial Decision

#### **Secretary for Justice v Tsang Wai Ling (“the Respondent”) CAAR 1/2019; [2020] HKCA 159**

**Decision** : **Application for review of sentence allowed**  
**Date of Hearing** : **6 March 2020**  
**Date of Judgment** : **6 March 2020**

#### **Background**

1. In February 2018, the Respondent impersonated the holder of two bank accounts by using her lost identity card and requested to make cash withdrawals and the issuance of cashier orders. She did so on 4 occasions over a period of 4 days. She successfully obtained 2 cash withdrawals totaling HK\$155,000 and a cashier order in the amount of HK\$850,000. When she committed the last offence by requesting the issuance of a cashier order of HK\$2.93 million, her false identity was revealed and she was arrested. The total loss suffered by the banks was HK\$1,005,000.
2. The Respondent pleaded guilty to 3 counts of conspiracy to steal and 1 count of theft. She was sentenced to a total of 16 months’ imprisonment.

#### **Issue in dispute**

3. Whether the sentences imposed on the Respondent were wrong in principle and manifestly inadequate. In particular, whether the Judge had erred in adopting starting points that failed to reflect the gravity of the offences and the aggravating features.
4. Whether the Judge had erred in ordering wholly concurrent sentences for all 4 charges.

#### **Department of Justice’s Summary of the Court’s rulings**

(full text of Court of Appeal’s judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=127238&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=127238&QS=%2B&TP=JU))

5. In allowing the application for review, the Court of Appeal elucidated a number of sentencing principles.
6. Theft is a serious offence. A theft practised on a bank constitutes an aggravating feature for it would undermine the integrity of the banking system of Hong Kong as a financial and commercial hub. (Paragraph 35)



7. Thefts and frauds on banks must be deterred by stiff sentences. For well-planned thefts and frauds on banks, the starting point should not be below 2 years' imprisonment. This is so even where the monetary amount involved is not significant and where there are no other aggravating features. (Paragraph 36)
8. In cases of conspiracy, the mere fact that the defendant was not the ring-leader and did not receive a substantial reward does not constitute valid mitigation. Conversely, it would be an aggravating feature if there is evidence that he had a pivotal role in the conspiracy or had received a substantial reward. (Paragraph 38)
9. The fact that the defendant had used another person's lost identity card in committing the offences would in itself attract a sentence of over 20 months' imprisonment. It is a relevant sentencing consideration. (Paragraph 39)
10. In determination of the appropriate starting point for theft or fraud practised on a bank, the Court may consider the sentencing guidelines for breach of trust. An appropriate adjustment should then be made to reflect the actual loss suffered by the victim(s). As this case involved a total sum of about HK\$4 million, a starting point of at least 5 years should be adopted. It should be reduced to 4 years and 8 months in view of the actual loss suffered by the victims. (Paragraph 40)
11. The Court of Appeal allowed the application for review of sentence and increased the Respondent's total term of imprisonment from 16 months to 34 months. Partially consecutive sentences were imposed. (Paragraphs 44 and 45)

**Prosecutions Division  
Department of Justice**

**April 2020**