



Summary of Judicial Decision

Secretary for Justice (“Respondent”) v Wong Chi Fung (“the Appellant”) CACV 14/2018; [2019] HKCA 548

Decision	:	Appellant’s appeal against sentence allowed to the extent of the 3 months’ imprisonment being reduced to 2 months
Date of Hearing	:	3 April 2019
Date of Judgment/Decision	:	16 May 2019

Background

1. The Appellant was among the 20 respondents who faced committal proceedings for interfering with and/or impeding the due execution of an injunction order by refusing to leave portions of Nathan Road between Argyle Street and Dundas Street (“the Area”) on 26 November 2014. The Appellant and 10 other respondents admitted liability for criminal contempt of court; the remaining 9 respondents who did not admit liability were found guilty after trial. On 17 January 2018, Andrew Chan J. of the Court of First Instance (“the judge”) sentenced the Appellant to 3 months’ imprisonment. This was his appeal against the sentence.
2. Most of the background facts can be found in paragraphs 3 to 36 of the judgment relating to the appeal lodged by one of the convicted respondents in the *Secretary for Justice v Wong Ho Ming* CACV 259/2017.¹ (paragraph 6) (full text of the CA judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=114287&QS=%2B&TP=JU)
3. The reasons for the Appellant’s sentence can be found in paragraph 21 to 31 of

¹ The relevant background facts from *Wong Ho Ming* can be summarized as follows: As a result of what was generally known as the “Occupy Movement”, a significant part of the public highway in Mong Kok, namely, the Area and the streets nearby had been occupied by different individuals since late September 2014. The general public was prevented to a varying extent from using the relevant roads/streets.

On 20 October 2014, the plaintiffs in HCA 2104/2014 (“the Plaintiffs”) obtained an *ex parte* injunction from the Court of First Instance (“CFI”) in relation to the Area. (full text of the CFI ruling at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=95376&QS=%2B&TP=JU)

By the judgment of 10 November 2014, the CFI ordered the *ex parte* injunction to be continued (“the Injunction Order”). (full text of the CFI judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=95659&QS=%2B&TP=JU)

The terms of the Injunction Order were essentially that the defendants (either by themselves or by placing objects thereat) are refrained from (a) occupying the Area to prevent or obstruct the reasonable use of the Area by the Plaintiff, and (b) preventing the Plaintiffs from removing such obstructions from the Area.



the reasons for sentence in the *Secretary for Justice v Chau Wan Ying and others* HCMP 774, 776, 778, 780, 781, 783, 784, 787, 788, 789, 791, 792, 793, 795, 796 & 798/2015. In those paragraphs, the judge explained that section 109A of the Criminal Procedure Ordinance (Cap. 221)² has no place in the present proceedings and that in view of the Appellant's overall involvement during the clearance operation, the only appropriate punishment is one of immediate imprisonment. The Appellant was sentenced to 3 months' imprisonment. (paragraphs 14-15) (full text of the CFI reasons for sentence at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=113204&QS=%2B&TP=JU)

4. By a notice of appeal filed on 19 January 2018, the Appellant sought to appeal against the said sentence. The grounds of this appeal are as follows (paragraph 16):
 - (i) The judge erred in the findings that the Appellant's involvement was "deep and extensive" and that he played a "leading role" on that day (paragraph 16(1));
 - (ii) The judge erred in failing to take into account the essential aims of reformation and social rehabilitation in sentencing young offenders and ought to be satisfied that there was no other method of dealing with the Appellant other than immediate imprisonment in view of his young age of 18 at the time (paragraph 16(2)); and
 - (iii) The sentence was manifestly excessive (paragraph 16(3)).

Issues in dispute

5. The issues in dispute are:-
 - (i) Whether there was sufficient evidence for the judge to find that the Appellant's involvement was "deep and extensive" and he played a "leading role" on the day;
 - (ii) Whether the judge had properly considered his young age at the time of the incident, and whether the judge was entitled to make the order of immediate imprisonment in the circumstances of the case despite his young age;
 - (iii) Whether the sentence was manifestly excessive having regard to the mitigating factors and sentences imposed by the judge on the other respondents in the same series in their circumstances.

² S 109A provides that no court shall sentence a person of or over 16 and under 21 years of age to imprisonment unless the court is of opinion that no other method of dealing with such person is appropriate.



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

(full text of the CA's judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=121897&QS=%2B&TP=JU)

6. The Court re-affirmed that criminal contempt threatened the due administration of justice and challenged the rule of law and that deterrent punitive sentence by a term of imprisonment was generally called for, although the court retained a wide discretion to impose other forms of sentences in appropriate cases (paragraph 3(1)&(2)).
7. A term of imprisonment was particularly warranted where the interference of administration of justice was grave, contumelious and contumacious (paragraph 3(2)).
8. The Appellant was punished for criminal contempt in this case because of his conduct in interfering with the due execution of the injunction order, but not because of his status or notoriety as a committed social activist or any other reason (paragraph 3(3)).
9. The judge was correct in his finding that the Appellant's involvement was deep and extensive and that he played a leading role, and such contempt was grave, contumelious and contumacious (paragraph 3(4)).
10. Despite the explanations advanced by the Appellant, his young age at the time and his personal circumstances, the only appropriate sentence was one of immediate imprisonment (paragraphs 3(5)&(6)).
11. The correct approach was to examine whether the Appellant's penalty fell comfortably within the range of sentences imposed on other contemnors and if not, whether there was proper justification for a departure. In this regard, the judge was correct in distinguishing the Appellant from other contemnors of similar ages (who were given lighter sentences). The judge was also correct in treating the Appellant and Wong Ho Ming as the most serious contemnors in the series in light of their culpability in taking a leading role in the contempt. However, when sentencing the Appellant to 3 months' imprisonment upon his admission of liability (and Wong Ho Ming to 4.5 months' imprisonment after trial), the judge failed to give weight to the Appellant's young age (who was 18 at the time) and personal circumstances in distinguishing him from Wong Ho Ming (who was 26 at the time) and did not give any reason why this was the case (paragraphs 3(7) to (9)).
12. After giving due weight to the Appellant's young age and personal circumstances, and evaluating them against his culpability and the seriousness of his criminal contempt, the proper starting point of his imprisonment should be 3 months. After deducting the one-third discount for his admission of liability, his acceptance of legal consequences and his apology to the court, the



sentence was reduced to 2 months (paragraph 3(10)).

Civil Division

Department of Justice

16 May 2019