



### Summary of Judicial Decision

#### **HKSAR v Sin Ka Ho (“the Defendant”) DCCC 783/2019; [2020] HKDC 337**

**Sentence** : 4 years’ imprisonment  
**Date of Plea** : 5 May 2020  
**Date of Sentence** : 15 May 2020

#### Background

1. The Defendant pleaded guilty to Charge 1 for having taken part in the riot outside the public entrance of the Legislative Council Complex on 12 June 2019, and admitted the Summary of Facts. Charges 2 and 3, alleging that the Defendant had resisted two police officers at the time of arrest, were left on court file.
2. On 12 June 2019, the second reading of the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 was scheduled to resume. The police had issued a letter of no objection to a public meeting organised by the Civil Human Rights Front on the pavement of Lung Wui Road opposite to the Legislative Council to be held from between 1000 hours on 12 June 2019 and midnight on 14 June 2019.
3. In the morning of 12 June 2019, a police checkline was formed outside the vehicular entrance of the Legislative Council Complex leading to the public entrance on Tim Mei Avenue. Police officers were deployed to prevent any unauthorised entry into the Legislative Council and maintain public order. Two rows of mills barriers were placed in front of the police checkline. A large group of protesters congregated opposite the police and built barricades with other mills barriers blocking the roads. There was a serious disruption to traffic. By late morning, the Legislative Council Secretariat announced that the second reading debate on the bill had been postponed indefinitely.
4. At around 1400 hours the same day, an estimated 8,000 to 10,000 protesters surrounded the Legislative Council, occupying the pavements and roads of Legislative Council Road, Tim Mei Avenue and Lung Wui Road.
5. At around 1530 hours, without provocation, around 40 to 50 protesters outside the vehicular entrance became emotional and violent. The protesters removed the barriers they erected in front of them to clear a



- path for them to charge at the police. They opened umbrellas and held home-made shields. Various items, including full water bottles, bricks dug up from pavements, umbrellas and iron bars, were hurled at the police. Despite repeated warnings, the protesters did not desist.
6. There were several attempts to charge the police checkline causing the officers to retreat backwards twice. A large number of protesters broke through the police mills barriers and flooded into the public entrance of the Legislative Council. The police officers were outnumbered and they had to retreat to the main entrance of the public entrance area just in front of the glass doors of the Legislative Council.
  7. The Defendant's conduct was clearly captured on the CCTV footages. He stood in front of the crowd and assisted others close to him. He hurled a long umbrella like a spear and threw various hard objects with force at close range at the police officers in front of him. He, together with other protesters, pushed mills barriers against the police repeatedly.
  8. At around 1546 hours, teargas was fired by the police to regain control of the public entrance. The protesters around and behind the Defendant retreated quickly. Yet, the Defendant alone remained there and continued to attack the police doggedly and restlessly. At around 1547 hours, the police subdued and arrested the Defendant for unlawful assembly. Under caution, the Defendant admitted he had participated in an unlawful assembly. At the time of arrest, the Defendant was wearing a white mask, a black helmet, a black windbreaker with a hood, a pair of long black trousers and a pair of thick gloves. Upon search, seven black zip ties were found in his bag.
  9. As captured on the CCTV footages, the protesters in front of the police at the public entrance caused a breach of the peace. Violence was perpetrated by the Defendant and other protesters. They acted in a disorderly, intimidating, insulting, provocative and violent manner. Such conduct would provoke others to commit a breach of the peace. An unlawful assembly descended into a riot, and the Defendant actively took part in the furtherance of the riot outside the public entrance.
  10. The Defendant was aged 22. He had a clear record. The major mitigation put forward on behalf of the Defendant was that he had shown genuine remorse by pleading guilty to the offence.

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

(full text of the Reasons for Sentence at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.js](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.js)



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11. Freedom of peaceful assembly is guaranteed by the Basic Law and the Hong Kong Bill of Rights Ordinance. The freedom of assembly, like the freedom of speech is indispensable to the building of a civilised society and essential to social stability and progress. The freedom of peaceful assembly enables members of the public to voice their criticisms, air grievances and seek redress on views they hold. However, the freedom of assembly is not absolute. Once a protester becomes involved in violence or the threat of violence, a breach of peace, then that protester crosses the line between constitutionally protected peaceful assembly and demonstration to an unlawful activity which is subject to legal sanctions. There is such a line to protect public order because society is prone to descend into anarchy if public order is not preserved. (paragraph 40)
12. A riot has an immediate and serious impact on the rule of law. The rule of law is a core value of Hong Kong and the cornerstone of its success. The law ensures that public order and peace are preserved; not threatened by the use of violence. If public order is not preserved, this affects the freedom and rights of citizens. (paragraph 41)
13. A sentence must not only seek to prevent the offender from reoffending, but also to give a proper warning to deter others from violating the law by breaking and disrupting public order in a like manner. Acts of violence or threats of violence will not and cannot be tolerated by a civilised and diversified society; such acts will attract a deterrent sentence to ensure that the public is protected. The Court of Appeal in ***HKSAR v Leung Tin Kei and others*** CACC 164/2018 reiterated that courts will impose a sentence that is punitive and sufficiently deterrent in accordance with principles established in applicable case law. An immediate custodial sentence is inevitable. As the Court of Final Appeal held in ***SJ v Wong Chi Fung*** (2018) 21 HKCFAR 35, deterrence overrides the sentencing principle of rehabilitation in the prevailing circumstances including the increasing incidents of unrest and a rising number of large-scale public protests involving violence. (paragraphs 43-44, 46 & 57)
14. It is a common feature of mass disorder that if individuals within the crowd act violently, this will in turn inflame and encourage others to behave similarly. The harm done comes from the combined effect of what is done en masse. In deciding the starting point of the offence, the extent of the overall violence involved must be considered, not the Defendant's individual acts in isolation. The Court of Appeal in ***Leung***



*Tin Kei* (supra) set out various factors to be taken into account when passing sentence on the offence of riot. (paragraphs 45, 47 & 51)

15. The riot that the Defendant had taken part in was large in scale and the extent of violence was very serious. The crowd of protesters confronted the police at the vehicular entrance for quite some time before the riot. Almost every protesters wore masks, goggles and helmets to hide their identities, and many held home-made shields. Umbrellas and mills barriers were collected from the back of the crowd and carried to those in the front like a conveyor belt. Bricks in the pavements were dug up and piled up ready to be hurled at the police. Triangular battering rams were erected and a path was cleared to make a charge at the police checkline. All this behaviour demonstrated premeditation of violence. Despite the repeated warnings, the rioters kept charging the police checkline violently. They outnumbered the police officers and flooded into the public entrance. The repeated attack on the police in the due execution of their duties, which led to a riot at the doors of the Legislature of Hong Kong was a direct attack on the rule of law. The criminal conduct of the Defendant and other rioters showed no respect for law and order, nor the safety of law enforcement officers. Their conduct caused disturbance to the public and harm to society. (paragraphs 56-57 & 59-62)
16. The Defendant actively took part in the riot. Not only did he hurl various hard objects at the police, he together with other rioters rammed the mills barriers with as much strength as they could muster. The Defendant's culpability was significant. (paragraph 58)
17. To give proper weight to public interest and to impose a punitive and deterrence sentence, despite the defendant being a young man with a previous good character, the Judge took a starting point of 6 years' imprisonment, reducing it by one-third to 4 years' imprisonment for his guilty plea. (paragraphs 64-65)

**Prosecutions Division  
Department of Justice**

**May 2020**