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**Summary of Judicial Decision**

**HKSAR v Leung Tin Kei (D1), Lo Kin Man (D3) and Wong Ka Kui (D5)**

**HCCC 408/2016; [2018] HKCFI 1329**

<b>Decision</b>	<b>: D1 sentenced to 6 years' imprisonment (wholly concurrently for the charges of Riot and Assaulting a Police Officer in the due execution of duty) D3 sentenced to 7 years' imprisonment (for a charge of Riot) D5 sentenced to 3.5 years' imprisonment (for a charge of Riot) (under application for leave to appeal)</b>
<b>Date of Hearing</b>	<b>: 18 January 2018 to 18 May 2018</b>
<b>Date of Sentence</b>	<b>: 11 June 2018</b>

**Background**

1. On 8 February 2016, at around 9:30 pm, officers of the Food and Environmental Hygiene Department ("FEHD") saw 8 to 10 persons wearing "Hong Kong Indigenous" jackets assisting hawkers to push carts to Portland Street's pavement for hawking. At around the same time, FEHD officers were surrounded and sworn at by about 100 people on Portland Street. One FEHD officer was assaulted by the crowd. A hawker pushed a cart with boiling oil on it towards FEHD officers. The officers left the scene at around 10 pm.
2. Later that night, a taxi was surrounded by a crowd on Portland Street and was alleged to have been responsible for a traffic accident. The Police arrived at the scene and asked the crowd to make way for the taxi so that they could carry out investigation. While the crowd finally let the taxi leave, they continued to surround the police officers at the scene. A large crowd of around 500 people gathered on the carriageway of Portland Street. A confrontation took place when the Police arranged for a movable platform to be brought into Portland Street for making public announcement to request the crowd to return to the pavement. Various objects were thrown at the Police. Police officers were assaulted.
3. The crowd remained on the Portland Street carriageway in a standoff with the police cordon line for hours despite the Police's warning for them to disperse. During the standoff, persons at the forefront of the crowd wore protective gears, helmets and held home-made shields and long poles. Many among the crowd wore masks. Bricks and other objects were thrown at the Police. At around 1:45 am on 9 February 2016, the crowd charged at the police cordon line on Portland Street. D3 was all along among the crowd confronting the Police, and he threw objects at the police cordon line for 13 times. D1 was also all along present at scene and was aware of the events.



4. At around 2 am, the police cordon line drove the crowd out of Portland Street towards Argyle Street. The crowd then gathered around the junction of Argyle Street and Portland Street with some holding home-made shields. They placed obstacles on the carriageway and occupied the same, thus obstructing the traffic. Around 10 traffic police officers attempted to clear the carriageway so that traffic can resume. D5 together with dozens of other people suddenly dashed onto the carriageway and assaulted a police officer from behind. D5 threw a styrofoam box at the police officer, while other people pushed the police officer onto the ground, threw things at him or hit him with poles. D5 was arrested at scene.
5. After D5 was arrested, the crowd temporarily retreated backwards but quickly advanced again towards the traffic police officers. They threw glass bottles and other items at the officers. The officers retreated towards the Shanghai Street direction, during which one officer fell onto the ground. The crowd then continuously threw objects at that police officer. D1, who was among the crowd, threw a plastic bin at that officer, kicked him and then used a wooden plank to hit his back. The officer, as a result of the attack, suffered from 2% permanent disability. The assaults only subsided when a traffic police officer fired warning shots to the sky.
6. D1 was charged with Incitement to Riot (Charge 2), jointly charged with D3 and two other defendants with Riot at Portland Street (Charge 3) and jointly charged with D5 and another defendant with Riot at Argyle Street (Charge 4). D1 was also charged with Assaulting a Police Officer.
7. After trial, D1 was convicted of the Riot charge at Argyle Street (Charge 4), and D3 was convicted of the Riot charge at Portland Street (Charge 3). D5 was convicted upon his own plea for a Riot charge on Argyle Street, while D1 was convicted upon his own plea for the Assaulting a Police Officer charge.
8. D5 on 15 June 2018 took out an application for leave to appeal against sentence; D3 on 21 June 2018 took out an application for leave to appeal against conviction and sentence; while D1 on 22 June 2018 took out an application for leave to appeal against conviction and sentence in respect of the Riot Charge (Charge 4).

### **Issues in sentencing**

9. Whether the socio-political background of the case and the defendants' personal background were mitigating factors in sentencing.
10. Whether the individual act(s) of the defendants should be considered a sentencing basis for the offence of Riot.
11. The sentencing approach for the offence of Riot.



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

(full text of the CFI's reasons for sentence (Chinese version only) at [http://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=115698&QS=%2B&TP=JU](http://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=115698&QS=%2B&TP=JU))

12. The socio-political background cannot be regarded as a mitigating factor in the present case. The Court will not condone acts of violence carried out in the name of expressing social or political views, and one of the objectives of criminal law was to prevent people taking the law into their own hands. (paragraphs 36-38) Neither can a defendant's personal or education background serve as a mitigating factor in this case as the Court needs to give proper weight to the public interest. (paragraph 43)
13. The offence of Riot or Unlawful Assembly derives its gravity from a defendant choosing to become one of those who, by weight of numbers, pursued a common and unlawful purpose. It is therefore wrong to sentence a defendant on the basis of his individual act(s). It is the very fact that the defendant's act was not committed in isolation that constitutes the gravity of the offence. (paragraph 44)
14. The overriding approach in sentencing for the offence of Riot should be general deterrence. The Court will consider the extent of violence involved, the scale of the riot, the extent of premeditation and the number of persons participating in the riot. There is a need for the Courts to show that such conduct, however well intended, will not be tolerated in the community. (paragraphs 46-48)
15. The riot on Portland Street in which D3 actively participated (Charge 3) was of a large scale and organised. The violence involved was serious and would endanger public's safety. The starting point for sentencing is 7 years' imprisonment. (paragraphs 49-55) As D3 was convicted after trial and there were no mitigating factors present, he was sentenced to 7 years' imprisonment. (paragraph 68)
16. The riot on Argyle Street in which D1 and D5 participated (Charge 4) was also very serious and organised, involving a crowd that greatly outnumbered the traffic police officers at scene. The crowd also attacked the police officers who were without any protective gears. The starting point for sentencing for D1 was 6 years' imprisonment. On the other hand, as D5 was arrested at a very early stage in the Argyle Street riot and his participation in the riot was limited, and the starting point for sentencing was thus reduced to 4.5 years' imprisonment. (paragraphs 56-62)
17. As D1 was convicted after trial and there were no strong mitigating factors present, he was sentenced to 6 years' imprisonment for the charge of Riot. Since the said Riot charge and the Assaulting a Police Officer charge (which D1 pleaded guilty to and was sentenced to 12 months' imprisonment after discount for guilty plea) originated from the same incident, the respective sentences were to be served wholly concurrently. (paragraphs 69-71) For D5,



as he pleaded guilty to the charge of Riot after the case was listed for trial but before the trial began, a discount in sentence was given and he was sentenced to 3.5 years' imprisonment. (paragraph 72)

**Prosecutions Division  
Department of Justice**

**June 2018**