



Summary of Judgment

Secretary for Justice (“SJ”) v So Yat Kai (蘇逸佳) (“Defendant”)

HCMP 351/2023; [2023] HKCFI 1932

Decision : **Defendant liable for criminal contempt and sentenced to 2 months’ imprisonment, suspended for 2 years, and liable to pay SJ’s costs on indemnity basis**

Date of Hearing : **26 July 2023**

Date of Decision : **26 July 2023**

Background

1. Between 8 to 22 December 2021, the Defendant (as a non-party) intentionally interrupted, disrupted and/or obstructed the hearings of the following four criminal proceedings:-
 - (a) HCMA 340/2020 on 8 December 2021
 - (b) HCCP 678/2021 on 17 December 2021
 - (c) HCCP 675/2021 on 21 December 2021; and
 - (d) WKCC 3632/2021 on 22 December 2021
2. All the four sets of criminal proceedings involved charges relating to: (1) acts and activities endangering national security; and (2) acts and activities taking place in the midst of the social unrests in 2019.
3. The Defendant’s actions were colloquially referred as that of “sit-in experts” (旁聽師) as part of the protest movement connected to the 2019 social unrests. The Defendant attended the said hearings as a member of the general public and conducted himself inappropriately by:-
 - (a) wearing inappropriate clothing carrying a political symbol in court;
 - (b) disputing with the presiding judges, magistrate and/or those acting on their behalf; and
 - (c) injuring a court security guard.
4. As recorded in the newspaper reports, the Defendant took it upon himself to wear the inappropriate clothing to test the limits of the court. The Defendant did not dispute the accuracy of the newspaper reports.



5. SJ contended that the conducts of the Defendant constituted interference or impediment to the due administration of justice. On 6 March 2023, SJ commenced the present proceedings against the Defendant and, on 9 March 2023, obtained leave for committal. The Defendant did not contest liability. The CFI dealt with sentencing on 26 July 2023.

The Issues

6. The questions for determination are the appropriate sentence and costs.

Department of Justice's Summary of the Decision

(Full text of the Decision at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=154040&QS=%2B%7C%28HCMP%2C351%2F2023%29&TP=JU)

7. The Court made reference to Secretary for Justice v Chin Po Fun¹ and Secretary for Justice v Wong Chi Fung (Criminal Contempt)² for the principles applicable to criminal contempt. Interfering with the administration of justice is a very serious matter, and one which normally attracts an immediate custodial sentence. (§§29 & 44)
8. Clothing bearing a political symbol has no place in a courtroom. (§47)
9. The Court found the Defendant's conduct in Incidents 1 and 2 serious. In Incident 1, there was a clear risk that the Defendant's conduct (forcefully entering the courtroom) may cause injuries to others. (§45) In Incident 2, the Defendant's refusal to change his attire or watch the proceedings by live streaming outside the courtroom was plainly designed to interrupt the proceedings. (§47)
10. The Court accepted that Incidents 3 and 4 were relatively less serious, but nonetheless found that the Defendant's conduct unacceptable and unreasonable, reflecting an intention to interfere with the proceedings. (§§48-49)
11. On the other hand, the Court found that there are strong mitigating factors in this case. First, the Court accepted that the Defendant was acting out of character due to influence of his deteriorating mental and physical conditions as well as the depressing social sentiment during 2021. (§52) Second, the Defendant has shown genuine remorse, and the chances of reoffending are not significant. (§53)

¹ [2021] HKCFI 598

² [2019] 2 HKLRD 1236



12. On sentence, the Court held that the seriousness of these matters deserves a total sentence of 2 months' imprisonment – 2 months for each of Incident 1 and Incident 2, 1 month for each of Incident 3 and Incident 4, and all sentences to run concurrently. However, the Court considered that this is a rare case where it should exercise discretion to temper justice with mercy. The Defendant is ordered to serve a sentence of 2 months which is to be suspended for 2 years on the conditions that during the period of suspension the Defendant must not commit any acts of criminal contempt or any criminal offences punishable with imprisonment, failing compliance he would be brought back to Court and the aforesaid prison sentence would be activated. (§§54-55)
13. As to costs, applying Secretary for Justice v Wong Chi Fung³, the usual order in a successful committal procedure is for costs to follow the event and to be payable by the person found guilty of contempt on an indemnity basis. (§57)
14. Upon taking all relevant matters into consideration (including the financial position of the Defendant, his interest in a property and his financial obligations to his family), the Court held that there is no sufficient reason to depart from the usual costs order. The Defendant is ordered to pay SJ's costs on indemnity basis, summarily assessed at HK\$310,955. (§§58-59)

Department of Justice
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³ [2023] HKCFI 1023