

## Case Summary (English Translation)

### HKSAR v 譚得志 (Tam Tak Chi)

DCCC 927, 928 & 930/2020; [2022] HKDC 343  
(District Court)

(Full text of the Court's reasons for sentence in Chinese at  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=143584&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=143584&currpage=T))

Before: HH Judge Stanley Chan

Date: 20 April 2022

*Sentencing – considerations – socio-political reality as sentencing background – more serious culpability for uttering seditious words after promulgation of the NSL – committing offence whilst on court bail an aggravating factor*

#### Background

1. The Defendant, charged with a total of 14 offences, was found guilty of 11 of them after trial, namely:

- (a) Charges 2, 4, 9, 10, 12, 13 and 14: uttering seditious words, contrary to s. 10 of the Crimes Ordinance (Cap. 200);
- (b) Charge 3: disorderly conduct in a public place, contrary to s. 17B(2) of the Public Order Ordinance (Cap. 245);
- (c) Charges 1 and 6: incitement to knowingly take part in an unauthorised assembly, contrary to common law and s. 17A of the Public Order Ordinance (Cap. 245); and holding or convening an unauthorised assembly, contrary to s. 17A of the Public Order Ordinance;
- (d) Charge 8: refusing or wilfully neglecting to obey an order given by an authorised officer, contrary to s. 10 of the Prevention and

Control of Disease (Prohibition on Gathering) Regulation (Cap. 599G).

2. See the reasons for verdict [2022] HKDC 208 handed down by the Court on 2 March 2022 for the detailed facts of the case.

### **Summary of the reasons for sentence**

#### **A. Sentencing background and other considerations**

3. The Court could not exclude the socio-political reality from the background of sentencing; it provided a better understanding of the seriousness of the offences committed by the Defendant and his political ends. The spate of violence broke out in late 2019 in Hong Kong had directly impacted upon the political environment, public peace and Government credibility in the Hong Kong society. The promulgation and implementation of the NSL on 30 June 2020 was a turning point. (para. 8)

4. The Defendant claimed that he did not realise that those offences of uttering seditious words would result in such grave legal consequences and that he would not have done so if he had known this. However, the Court noted that the Defendant had repeatedly on various occasions reminded others he was supported by a legal team and gave out the phone numbers of the legal team, stating that he was not afraid of the authority or punishment. (para. 12)

5. Charges 10, 12, 13 and 14 of uttering seditious words took place after the promulgation of the NSL. The Court took the view that this rendered the four charges even more serious in terms of culpability. (para. 13)

6. Moreover, Charges 10, 12, 13 and 14 were committed whilst the Defendant was on court bail, which was an aggravating factor. (para. 14)

7. The Defence said that the Defendant was a Christian and a preacher with his own “honest beliefs”. The Court noted that the Defendant

graduated from two top universities in Hong Kong and held two master's degrees in religious studies and theology. However, from the instances and the Defendant's words and deeds detailed in the reasons for verdict, the image and basic virtues that a learned, cultivated and noble politician was supposed to have were lacking, not to mention a loving and merciful preacher who treated others with forgiveness. What the Court saw instead was a street rough lashing out boundless verbal abuses, even going so far as cursing the offspring of others, and looking at events and treating others in a friend-or-foe confrontational mindset indiscriminately. (paras. 15-16)

8. The Defence stated that the Defendant did not commit the crime for his own interest. The Court considered this an attempt to downplay the Defendant's wishful thinking that he could win the primary election and then get a seat in the LegCo. He had sensationally and repeatedly attacked the pro-establishment camp, for the purpose of getting into the LegCo, gaining entry to the governance structure of Hong Kong, so as to enjoy the income, authority and social status provided by the Government public funds. As far as the Defendant was concerned, it would be all very well to use the Government's money to attack the Government and strengthen his own political influence. However, this could only be considered as obtaining personal gain. (para. 17)

### **B. Initial sentences on various charges**

9. The Court could not find any substantive mitigating grounds available to the Defendant. The sentencing considerations and initial sentences on the various charges were as follows:

**(a) Charge 1: Incitement to knowingly take part in an unauthorized assembly**

- (i) At the material time, Hong Kong was still very much reeling from the violent social events in 2019.
- (ii) The Defendant took advantage of a meeting which targeted "Tai Po secondary school students" to incite others to take part in an unauthorised assembly, calling on the buoyant and

impetuous young audience to take part in the unauthorised procession in Central two days later. He also deliberately derogated the public powers of the police, pushing the young fledglings into another criminal arena, and using them to promote and implement the intentions of those with political motives or those masterminds behind the scene. These were all aggravating factors.

- (iii) Citing *Secretary for Justice v. Poon Yung Wai* [2021] HKCA 510 (in which the respondent incited others to take part in an unlawful assembly outside the San Uk Ling Holding Centre in September 2019), the Court noted that the context of offending was of relevance to the gravity of an offence and the culpability of an offender. The fact that the respondent in that case incited others in the social context and under the circumstances at that time to commit unlawful assembly involving violence clearly increased the risk of breaking social peace and order.
- (iv) At the material time, the Defendant spoke for about 18 minutes. From the video footages, it appeared that many of the participants were in school uniforms, and some of them appeared to be agitated.
- (v) The maximum penalty for this offence was imprisonment for 5 years. The Court adopted 2 years as the starting point. In the absence of substantive mitigating grounds, a sentence of 2 years' imprisonment was imposed. (para. 18(1))

**(b) Charges 2, 4, 9, 10, 12, 13 and 14: Uttering seditious words**

- (i) These seven charges of uttering seditious words were similar in nature. That said, July 2020 should be the dividing line for them as charges 10, 12, 13 and 14 were committed after the NSL took effect, and involved the defendant's further commission of offences whilst on court bail.
- (ii) The Court considered the events of large-scale mass violence beginning in 2019, the Defendant's role as a political figure at the time, his political affiliations background, as well as his intent and calculation for getting elected to the LegCo. He

repeatedly shouted or asked the people at the scene to echo the political slogan “Liberate Hong Kong • Revolution of our times” as well as to fight against the police force, and called for the police force to be disbanded.

- (iii) The maximum penalty for each offence was imprisonment for 2 years.
- (iv) As for the first group of charges (namely Charges 2, 4 and 9), the Court took 15 months’ imprisonment as the starting point for sentencing in respect of each charge, with the three sentences running concurrently.
- (v) As for the second group of charges (namely Charges 10, 12, 13 and 14), the Defendant committed the offences whilst on court bail, and the NSL was already in force. The Defendant, nevertheless, intensified his efforts to incite others to disobey the law, derogated the authority and legal effect of the NSL, and continued to challenge the Government’s public powers. Therefore, the Court was obliged to pass a deterrent sentence. In addition to punishing the offender of the current case, it was also necessary to deter potential future offenders. The Court adopted a starting point of 18 months’ imprisonment in relation to each charge, with the four sentences running concurrently.
- (vi) The Court held that an offender who had committed more offences should not be entitled to a greater sentence reduction by virtue of concurrent running of sentences. Hence, 3 months of the sentence for the first group were to be run consecutively to the 18-month sentence for the second group. The total length of sentence for these seven charges of uttering seditious words was 21 months. (para. 18(2))

**(c) Charge 3: Disorderly conduct in a public place**

- (i) The Defendant brought with him a microphone and a loudspeaker and spoke foul language to deliberately provoke the on-guard police at the scene ignored the police’s warnings. The Defendant committed the offence against the backdrop of the then violent events, but on the day of the offence, no social

unrest or police-public clash took place.

- (ii) The maximum penalty for this offence was 12 months' imprisonment. The Court took 1 month as the starting point and in the absence of mitigating factors for reduction of sentence, the Defendant was sentenced to 1 month's imprisonment. (para. 18(3))

**(d) Charge 6: Holding or convening an unauthorised assembly**

- (i) The Defendant had called for this unlawful assembly online the day before it took place, disguising it as a "health workshop" and hyping up the assembly as being exempted by the law in an attempt to pull the wool over the eyes. The Defendant took part in the planning, convening and holding of this unauthorised assembly. That said, the crowd gathered was not too large and no untoward incident occurred.
- (ii) The maximum penalty for this offence was 5 years' imprisonment. The Court adopted 1½ years as the starting point, and the Defendant was sentenced to imprisonment for 1½ years in the absence of mitigating factors for reduction of sentence. (para. 18(4))

**(e) Charge 8: Refusing to obey an order given by an authorised officer**

- (i) The Court imposed a fine of \$5,000, payable in full within 2 months, or a further imprisonment term of 14 days in default. (para. 18(5))

10. As the Defendant had 11 sentences, the Court had to consider the totality principle to avoid imposing on the Defendant an unduly heavy or unjust punishment. The Defendant was finally sentenced to a total of 40 months' imprisonment, together with a fine of \$5,000. (paras. 19-21)