

Case Summary (English Translation)

HKSAR v 尹耀昇 (Wan Yiu Sing Edmund)

DCCC 615/2021; [2022] HKDC 958
(District Court)

(Full text of the reasons for sentence in Chinese at
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=147812&currpage=T)

Before: HH Judge A.N. Tse Ching

Date: 7 October 2022

Sentencing – conspiracy to do acts with a seditious intention – s. 10(1)(a) of Crimes Ordinance (Cap. 200) – sentencing factors – widely circulated internet programmes holding considerable sway over the public – social background at the time of offence – incitement to violence with a view to bringing about Hong Kong’s independence – very close to secession under NSL – unlawful acts persisted albeit NSL having come into force – political aspirations not a mitigating factor

Background

1. The Defendant pleaded guilty to one count of “conspiracy to do acts with a seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200); and three counts of “dealing with property known or believed to represent proceeds of an indictable offence”, contrary to s. 25(1) and (3) of the Organised and Serious Crimes Ordinance (Cap. 455):

- (a) Charge 1: Between 8 February 2020 and 21 November 2020, the Defendant, in Hong Kong, conspired with other persons to do acts with a seditious intention, namely continuously hosting, producing, publishing and uploading the internet programme “不

上頻道” (“the Programme”) to “Giggs Channel” (傑斯頻道, “the Channel”) on the webpage in question (“the Website”), YouTube and Patreon, with the intention to bring into hatred or contempt or to excite disaffection against the Central Authorities and/or the HKSARG; to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; to incite persons to violence; to counsel disobedience to law or to any lawful order; etc.; and

(b) Charges 6, 9 and 10: Between 22 February 2020 and 30 November 2020, the Defendant and a co-defendant, by separately using three bank accounts, which included the Defendant’s personal savings account and two joint accounts with the co-defendant, dealt with property known or believed to represent proceeds of an indictable offence, with a total sum of HKD \$10,325,908.40.

2. On the basis of the Defendant’s guilty pleas to the above charges and consent to the confiscation of the property representing proceeds of an indictable offence in charges 6, 9 and 10, the Prosecution agreed to put the other charges against the Defendant and the co-defendant on file; they were not to be proceeded unless there was leave from the court. (para. 3)

Summary of the reasons for sentence

A. Facts admitted by the Defendant

3. In relation to the first count of conspiracy to do acts with a seditious intention (namely Charge 1), the facts showed that the Defendant, nicknamed “Giggs” (傑斯), was an online radio host who had been operating the Channel on the Website since around 2005. Since 14 July 2016, the Defendant had started co-hosting and co-producing the Programme with another person on the Channel on a regular basis. After production, the Programme would be published and uploaded onto the Website. On payment of a subscription fee, the public could join the Channel as members, who would then be able to view the Programme

on the Channel. The Programme would also be published and uploaded onto the YouTube for viewing by the general public for free. Moreover, the Defendant had opened an account on a crowdfunding platform Patreon since around 31 July 2020, where parts of the Programme were uploaded and could be viewed by his subscribers upon payment. (paras. 5 and 6)

4. During the period of the offence of over nine months, the Defendant hosted the Programme on a total of 39 occasions, each lasting approximately over 1.5 hours; the episodes of the Programme were all uploaded onto YouTube for public viewing free of charge. As at 25 November 2020, each episode of the Programme had attracted an average of over 30,000 “views”. (para. 8) The Programme covered the following content: (para. 9)

- (a) inciting others to resist or overthrow the Communist Party of China;
- (b) throwing of petrol bombs;
- (c) taking the law into their own hands (especially by using violence against certain government officials);
- (d) participating in “civil disobedience” activities with a view to bringing down or hindering the HKSARG;
- (e) advocating for Hong Kong’s independence and supporting Taiwan’s self-determination;
- (f) promoting the so-called “35+ Primaries” with a view to gaining a pro-democracy majority at the LegCo Election 2020 so as to veto all budgets (with the ultimate goal of dissolving the HKSARG);
- (g) supporting the fugitives who had fled to Taiwan, etc.

5. In relation to the other three counts of dealing with property known or believed to represent proceeds of an indictable offence (namely Charges 6, 9 and 10), the deposits in question were totally incommensurate with the income of the Defendant and that of the other holder of the accounts in question. All the three bank accounts in question had transactions of substantial withdrawals and deposits for unknown reasons. The Defendant admitted that he, having reasonable

grounds to believe that the sum of HKD \$10,325,908.40 received in those three accounts, in whole or in part directly or indirectly represented any person's proceeds of an indictable offence, dealt with the said property. (para.18)

B. Sentencing

(a) Charge 1: Conspiracy to do acts with a seditious intention

6. The decisions by courts of the same level were not binding on the Court in the present case. As the CA had repeated time and again, circumstances varied from case to case and sentences in other cases offered little guidance. The Court considered that this case had the following serious features: (paras. 24 and 25)

(a) The Defendant was an online media practitioner, and the media had the ability to sway public opinion. Within these nine months or so, the Defendant persisted in committing the offence by uploading onto several online platforms one episode of the Programme per week on average (totalling 39 episodes of the Programme of approximately 1.5 hours each) and each episode of the Programme attracted an average of over 30,000 "views". The episodes of the Programme were all uploaded onto YouTube, where they were widely circulated and accessible to netizens worldwide for free viewing. In other words, no matter in terms of quantity, duration, details or impact, the present case went far beyond such cases as *HKSAR v Cho Suet Sum and Another* [2022] HKDC 119 (where the first defendant exploited the young and ignorant second defendant to print and distribute leaflets containing content advocating Hong Kong's independence) and *Secretary for Justice v Poon Yung Wai* [2021] HKCA 510 (where the defendant published two posts in a group consisting of over 10,000 members on the social medium Facebook to incite others to take part in an unlawful assembly outside the San Uk Ling Holding Centre). (paras. 23, 26 and 29)

(b) The Defendant committed the offence at a time when Hong Kong

was confronted with a series of continuous and serious onslaughts of violence and unlawful acts, which included many large-scale and prolonged riots or violent unlawful assemblies affecting extensive areas or multiple locations. In such social atmosphere and circumstances, the Defendant obviously added fuel to the fire and exacerbated the risks of breaching the peace and undermining the public order by inciting others to resist or overthrow the Communist Party of China, to throw petrol bombs, to take the law into their own hands (especially by using violence against certain government officials), to participate in civil disobedience activities with a view to bringing down or hindering the HKSARG, to advocate for Hong Kong's independence and support Taiwan's self-determination, to promote the so-called "35+ Primaries" with a view to gaining a pro-democracy majority at the LegCo Election 2020 so as to veto all budgets (with the ultimate goal of dissolving the HKSARG) and to support the fugitives who had fled to Taiwan. (para. 30)

(c) The mere incitement to violence with a view to bringing about Hong Kong's independence was very close to the offence of secession under the NSL: see *Cho Suet Sum*. (para. 31)

(d) The NSL came into force on 30 June 2020 but the Defendant persisted with his unlawful acts during the five months after the Law had come into force until his arrest, which was a blatant challenge against the law. (para. 32)

7. Therefore, the Court held that the facts of this case were extremely serious. The maximum penalty for the offence of conspiracy to do acts with a seditious intention was 2 years' imprisonment. The appropriate starting point should be 21 months' imprisonment. (para. 33)

8. Given the Defendant's indication to plead guilty before the case was set down for trial, the Court agreed that he should be given the maximum reduction in sentence, namely, the one-third discount. His good record and remorse were already subsumed in the one-third discount accorded for his guilty plea. Unless for any special reason, it would go against

the sentencing principles to allow a higher discount. (paras. 34 and 35)

9. Counsel for the Defendant submitted some other mitigating factors:

(a) The Defence said that the Defendant's incarceration had prevented him from taking care of his aged parents, ailing wife, and beloved daughter. The Court held that this was not a mitigating factor; the Defendant should have contemplated such consequences before he committed the offence. (para. 36)

(b) The Defence said that the Defendant was not a political figure and his commission of the offence was not for self-interest. The Court noted that it was the Defendant's admission that one of the purposes of his seditious remarks was to promote the "35+ Primaries" in order to gain a pro-democracy majority, *i.e.* partly for the sake of votes. Furthermore, producing and publishing internet programmes was his source of income, the amount of which hinged on the hit rates. (para. 37)

(c) The Defence contended that very few remarks made in the Programme concerned the administration of justice. The Court cited case authorities to show that the definition of sedition itself already covered obstructing the administration of justice. Moreover, the Defendant admitted that he had the intention to bring into hatred or contempt or to excite disaffection against the Central Authorities and/or the HKSARG; to excite inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established; to counsel disobedience to law or to any lawful order; to raise discontent or disaffection amongst inhabitants of Hong Kong; to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; to incite persons to violence, etc.; each and every such intention would obstruct the administration of justice. (paras. 38 and 39)

(d) The Defence said that the Defendant talked about politics only upon the request of his employer, and at the time he honestly

believed what he said was correct. The Court considered that his remarks were no social commentaries or political discussions, but vulgar verbal abuses. Citing *Wong Chi Fung* and an Australian case, the Court held that political aspirations were not a mitigating factor, and that general deterrence had to be the primary consideration in determining the ultimate sentence. (paras. 40 and 41)

- (e) The Defence said that the Defendant had always been inarticulate and straightforward in talk, which was the reason he blurted out angrily and recklessly what was generally not considered unlawful at the time. The Court noted that the Defendant was an online media practitioner, who had been making a living out of talking; such contention by the Defence was incredulous. The Defendant persisted in committing the offence over a span of nine months; this was not an act done in a reckless spur of the moment or out of momentary anger. The offences of sedition were put in place as early as 1938. Any right-minded and reasonable person would have known that incitement to violence was a criminal offence. (para. 42)

10. Absent other mitigating factors, the sentence on this charge was reduced to 14 months' imprisonment.

(b) Charges 6, 9 and 10: Dealing with property known or believed to represent proceeds of an indictable offence

11. This was a serious offence, yet there were no sentencing guidelines because the circumstances varied from case to case. The present case involved over HKD\$10 million, with altogether 413 transactions in withdrawals, deposits and transfers over a span of more than nine months. The Defendant was the mastermind and eight accounts were involved; some of the accounts were held by different companies and there were transfers of funds among these accounts. While this operation was not the most sophisticated of all, it was by no means the simplest either. The Court adopted the imprisonment terms of 18 months, 30 months and 18 months as the starting points for these three

charges respectively. In light of the Defendant's timely pleas, the respective sentences were reduced to 12 months, 20 months, and 12 months. (paras. 49-51)

C. Overall sentence

12. Although the four charges took place in proximity of time or contemporaneously, Charges 6, 9 and 10 were entirely different in nature from Charge 1. It was an aggravating factor that the Defendant had committed a series of offences together with different persons over a span of nine months. That said, having regard to the totality principle and the overall facts of the case, the Court held that an overall sentence of 4 years' imprisonment was appropriate. The sentence was reduced by one-third for the guilty pleas to 32 months' imprisonment. Accordingly, the Court ordered the sentences on the three charges of dealing with property known or believed to represent the proceeds of an indictable offence to run concurrently, but 18 months of which were to run consecutively to the sentence on Charge 1 (*i.e.* 32 months' imprisonment). (para. 52)

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