

Case Summary (English Translation)

HKSAR v Koo Sze Yiu (古思堯)

WKCC 5279/2023; [2024] HKMagC 3; [2024] HKMagC 4
(West Kowloon Magistrates' Courts)

(Full text of the Court's statement of findings in Chinese at
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=158214&QS=%2B&TP=RV;

Full text of the Court's reasons for sentence in Chinese at
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=158213&QS=%2B&TP=RS)

Before: Mr. So Wai-tak, Chief Magistrate

Date of conviction: 16 February 2024

Date of sentence: 16 February 2024

Offence of “attempted to do or made any preparation to do an act or acts with a seditious intention” – s. 10(1)(a) of the Crimes Ordinance (Cap.200)

Sentencing – pre-emptive nature in gravamen of the offence – recidivism despite previous sentences – deterring imitation – 9 months' imprisonment as the starting point

Background

1. The defendant pleaded not guilty to one count of “attempted to do or made any preparation to do an act or acts with a seditious intention”, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200), and was convicted after trial. (para. 1)

Summary of the Court's statement of findings and reasons for sentence

A. Facts of the case

2. On the morning of 7 December 2023, the defendant indicated to the Assistant Electoral Officer at the Registration and Electoral Office (REO) that he would stage a protest at the REO around 11 am the following day, and would bring along a coffin and scatter creek money; and that he had already notified the media to come for news coverage. (para. 4 of the Statement of Findings)

3. On the morning of 8 December 2023, the police arrested the defendant and seized from his residence exhibits, including objects such as one black wooden coffin. (paras. 5-6 of the Statement of Findings)

4. The defendant admitted his intention to bring along the coffin to the REO to stage a protest. He would in advance notify the media to attend the scene for news coverage, where he would chant slogans and issue a statement. (paras. 12-13 of the Statement of Findings)

B. Analysis

5. The defendant was facing a charge of “attempted to” or “made any preparation to” do an act or acts with a seditious intention. He planned for the action, including making a coffin, writing the words in question, making arrangements for transportation, notifying the media to attend the scene for news coverage, pre-printing position statements, etc. Therefore, he clearly had the intention to stage the protest, and through which to spread his messages. In the Court’s view, the defendant already made sufficient “preparation”. (para. 14 of the Statement of Findings)

6. The Court pointed out that citizens are entitled to freedom of speech. That said, freedom of speech is not an absolute right, which must be exercised within the framework permitted by the existing legislation. The defendant used what symbolized death and the end namely coffin and scattering of creek money as metaphors, for the purpose of overthrowing the Central Government and bringing an end and finality to the regime of the Central Authorities. As regards the words he

originally wrote on the coffin, they were obviously intended for inciting hatred against the Central Government and the HKSAR Government, making use of the District Council election as a pretext to bring others into contempt of the District Council, and cause others to reject the election results, thereby exciting resistance and disaffection against the governance of the Central Authorities and the HKSAR Government. The defendant stated that his purpose was to insult the governments and to provoke others' fear of the governments. The Court held that the words involved in the present case and the defendant's conduct as a whole were acts with a seditious intention, namely, "to bring into hatred or contempt or to excite disaffection against the Central Authorities and/or the HKSAR Government" as particularised in the charge; and that the defendant himself certainly had this intention in mind. Accordingly, the defendant was convicted as charged. (paras. 17-19 of the Statement of Findings)

C. Sentencing

7. The higher courts did not lay down any sentencing guidelines for the offence of "doing act/s with a seditious intention". Under the existing law, the maximum penalty for a first offender was a fine of HK\$5,000 and 2 years' imprisonment. In sentencing, the Court had to take into account the circumstances of the case, including the context in which the offences were committed, and the *modus operandi*, frequency, scale, subject of the incitement, risks and consequences etc. in relation to the offences, so as to determine the offender's culpability. Moreover, the Court had to give regard to the pre-emptive nature in the gravamen of these offences, which aimed to prevent the perpetrator from doing seditious acts to cause, excite, incite or infect others to form or identify with the perpetrator's beliefs, thereby realising his assertions by unlawful means. Therefore, the Court had to give primary consideration to deterrence in sentencing, so as to nip in the bud the spread and infiltration of such ideas advocated by seditious acts in society, and the ensuing risks and consequences of breaching the peace. (paras. 5-6 of the Reasons for Sentence)

8. The defendant contacted the media in a planned manner and acted

ostentatiously in advance, with the sole purpose of promoting his ideas. He took the District Council election as an opportunity to promote his ideas, with the intention to bring others into hatred and hostility and to excite disaffection against the Central Government and the HKSAR Government. As for deterrent effect of sentence, the Court took into account the defendant's recidivism despite previous sentences, as well as the need to deter imitation, so as to prevent further disruption to the relative peace of the subsided social atmosphere. (para. 7 of the Reasons for Sentence)

9. The Court adopted 9 months as the starting point. Absent any mitigating factors, the defendant was thus sentenced to 9 months' imprisonment. (para. 8 of the Reasons for Sentence)

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