IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 143

Magistrate's Appeal No 9019 of 2016

Between

ANG ZHU CI JOSHUA

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

ORAL JUDGMENT

[Criminal procedure and sentencing] — [Sentencing]

Ang Zhu Ci Joshua
v
Public Prosecutor

[2016] SGHC 143

High Court — Magistrate's Appeal No 9019 of 2016
Chao Hick Tin JA
14 July 2016

21 July 2016 Judgment reserved.

Chao Hick Tin JA:

1 The appellant, Ang Zhu Ci Joshua ("the Appellant"), is a 29-year-old male Singaporean who was charged with 127 counts of filming or attempting to film "upskirt" videos under s 509, or s 511 read with s 509 of the Penal Code (Cap 224, 2008 Rev Ed), respectively. The Appellant pleaded guilty to 15 proceeded charges, with the remaining 112 charges taken into consideration for the purposes of sentencing. The district judge ("the DJ") sentenced the Appellant to 12 weeks' imprisonment for each proceeded charge and ordered three of the sentences to run consecutively, resulting in a global sentence of 36 weeks' imprisonment. The Appellant appealed against the sentence.

2 At the hearing before me, counsel for the Appellant, Mr Quek Mong Hua ("Mr Quek"), focused his arguments on two features of the case which he submitted justified probation as a sentence. The first was the mental condition of the Appellant as diagnosed by his psychiatrist, Dr Ang Peng Chye ("Dr Ang"). The second was the fact that the Appellant has been successfully

rehabilitated in the two years since he was apprehended in December 2013 and has little or no risk of reoffending. I will deal with each argument in turn. In any event, Mr Quek also submitted that this is a proper case for the court to temper justice with mercy.

3 In determining the mitigating value to be attributed to an offender's mental condition, the key question is whether the nature of the mental condition is such that the individual retains substantially the mental ability or capacity to control or refrain himself when he commits the criminal acts. If the individual's ability to refrain himself is not impaired, and he instead chooses not to exercise his self-control, then the presence of the mental condition will be given little or no mitigating value (see *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("*Chong Hou En*") at [28]). In the present case, the Appellant was diagnosed by Dr Ang to suffer from "[d]epressive illness with obsessive-compulsive features." According to Dr Ang, the Appellant's taking of the "upskirt" videos were impulsive and were his means to obtain relief from the tension and rejection he felt in life. Having considered the circumstances of the case, I find that the Appellant has not established that his ability to control his impulses had been impaired by his alleged mental condition. The manner in which the Appellant executed the offences, the long period of offending without discovery, the number of offences and the particular victims he targeted all show that the Appellant's commission of the offences was calculated and opportunistic. This runs counter to Mr Quek's assertion that his mental condition robbed him of his self-control. I am unable to accept that the Appellant did not harbour any ill intentions when he arranged to meet the victims. Nor could I accept that he was seized on each occasion with an uncontrollable impulse to film them only upon meeting them. I therefore give no mitigating value to the Appellant's alleged mental condition.

4 What I do find significant is Mr Quek's second argument, *ie*, that the Appellant has been successfully rehabilitated and care must be taken to ensure that his progress is not reversed. I note that the Appellant has been undergoing intensive psychiatric therapy under Dr Ang and counselling under one Tony Ting ("Mr Ting"), a Counselling Psychologist at the church that the Appellant attends. The Appellant saw Dr Ang 11 times and Mr Ting 16 times in total over the past two years. Both Dr Ang and Mr Ting gave glowing reviews of the progress that the Appellant has made thus far and unequivocally vouched that the Appellant is unlikely to reoffend. I further note that the Appellant has the exceptional support and commitment from his family, friends and church to secure his recovery and rehabilitation. I also have no doubt that the Appellant is genuinely remorseful.

5 While I accept that the Appellant has indeed been rehabilitated in the sense that he has little or no risk of reoffending, I do not think that probation is an appropriate sentence. For an offence such as this, public interest and deterrence must be accorded due weight. A custodial sentence should be imposed not only because a strong message must be sent to deter like-minded individuals from abusing technological advancements to prey on unsuspecting victims, but also because the Appellant has committed or attempted to commit this serious offence 127 times and over a long period of three and a half years. He ought to be appropriately punished for his actions. While rehabilitation is a relevant sentencing principle, public interest is just as important a consideration. Nevertheless, when imposing sentence, care must be taken to ensure that it is not such a crushing sentence that could destroy any hope of recovery and reintegration of the Appellant. It is in the public's interest that this does not happen (see *Chong Hou En* at [67]).

6 In my view, a sentence of 12 weeks' imprisonment per charge is appropriate. This is in line with the precedent cases of *Chong Hou En*, *Public Prosecutor v Be Keng Hoon* [2014] SGDC 176 ("*Be Keng Hoon*") and *Public Prosecutor v Soo Ee Hock* [2011] SGDC 26 ("*Soo Ee Hock*"). Mr Quek argues that there were more aggravating factors present in *Chong Hou En* compared to the present case. Indeed, in *Chong Hou En*, there were young victims involved and a higher degree of premeditation and intrusion into the privacy of the victims. However, in the present case, there were more victims and the Appellant faced significantly more charges. I find that the sentence of 12 weeks' imprisonment per charge is not manifestly excessive.

7 Turning to the question of how many of the sentences imposed should be ordered to run consecutively, I take into account the Appellant's high degree of remorse, his exceptional rehabilitation and the strong support he has from his family and community. Bearing these factors in mind, and tempering justice with mercy, I am of the view that it should suffice if two of the sentences were ordered to run consecutively instead of three, resulting in a global sentence of 24 weeks' imprisonment. As Yong Pung How CJ held in *Tan Kiang Kwang v Public Prosecutor* [1995] 3 SLR(R) 746, if there is evidence that the accused has changed for the better between the commission of the offence and the date of sentence, the court may properly take this into account in appropriate circumstances (at [20]). It was similarly observed by V K Rajah JA in *Chan Kum Hong Randy v Public Prosecutor* [2008] 2 SLR(R) 1019 ("*Randy Chan*") at [29] as follows:

> In cases involving an inordinate delay between the commission of an offence and the ultimate disposition of that offence via the criminal justice process, the element of rehabilitation underway during the interim cannot be lightly dismissed or cursorily overlooked. If the rehabilitation of the offender has progressed positively since his commission of the offence and there appears to be a real prospect that he may,

> with time, be fully rehabilitated, this is a vital factor that must be given due weight and properly reflected in the sentence which is ultimately imposed on him. Indeed, in appropriate cases, this might warrant a sentence that might otherwise be viewed as "a quite undue degree of leniency" (per Street CJ in *R v Todd* ([23] supra) at 520).

Rajah JA in *Randy Chan* (at [28]) also cited with approval the following passage in *The Queen v Lyndon Cockerell* [2001] VSCA 239:

> … [W]here there has been a relatively lengthy process of rehabilitation since the offending, being a process in which the community has a vested interest, the sentence should not jeopardise the continued development of this process but should be tailored to ensure as much as possible that the offender has the opportunity to complete the process of rehabilitation.

8 In my view, too long a period of incarceration has the potential to undo all the progress the Appellant has achieved thus far. A global sentence of 24 weeks' imprisonment appropriately balances the invariably competing sentencing principles of deterrence and retribution, and rehabilitation. I also emphasise that it is in the public's interest that an accused's risk of recidivism is kept at bay.

9 I note that in both *Soo Ee Hock* and *Be Keng Hoon*, the accused persons had similarly pleaded that they sought medical help for their mental condition, were deeply remorseful and unlikely to reoffend. The district judge in both cases nevertheless sentenced the accused persons to 3 months' imprisonment per charge and ordered three of the sentences to run consecutively, resulting in a total sentence of 9 months' imprisonment. Both cases, however, are clearly distinguishable.

10 In *Soo Ee Hock*, the district judge made no finding of fact that the accused had been successfully rehabilitated. Indeed, unlike the present case, there were no reports from a

psychiatrist or psychologist explicitly stating that the accused was unlikely to reoffend. Furthermore, it was apparent that the district judge did not find the accused remorseful. In her view, she had "no doubt that [the accused] would have continued [to offend] if he was not caught" (at [14]). She placed no weight on the fact that the accused sought medical help as he had consulted a psychiatrist only almost a year after he was arrested and charged by the police (unlike the present case where the Appellant had sought help immediately).

11 In *Be Keng Hoon*, the district judge accepted that the offender was deeply remorseful and took into account the fact that he was actively seeking help to deal with his problems. However, there was nothing on the facts in that case to suggest that the accused had made the same kind of significant progress that the Appellant has achieved presently. Furthermore, the accused in *Be Keng Hoon* faced more than twice the number of charges than the Appellant.

12 In the final analysis, the punishment must fit both the crime and the offender. Considering the circumstances of the case as I have described above, I allow the appeal in the sense that while I agree that the sentence of 12 weeks' imprisonment per charge is appropriate, I only order two of the sentences to run consecutively, resulting in a global sentence of 24 weeks' imprisonment.

Chao Hick Tin
Judge of Appeal

Quek Mong Hua, Desmond Tan and Alexis Loo (M/s Lee & Lee) for the appellant;
Agnes Chan (Attorney-General's Chambers) for the respondent.
