

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 147

Originating Summons No 871 of 2017
(Summons No 3979 of 2017)

In the matter of an application by the Attorney-General for an order of
committal for contempt of court

And

In the matter of Section 7(1) of the Supreme Court of Judicature Act (Cap 322,
2007 Rev Ed)

And

In the matter of Order 52 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)

And

In the matter of the Affidavits filed by Ong Wui Teck in HC/OS 165 of 2016

The Attorney-General

... Applicant

And

Ong Wui Teck

... Respondent

FOUNDATIONS OF DECISION (SENTENCING)

[Contempt of Court] — [Criminal contempt]
[Contempt of Court] — [Sentencing]

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Attorney-General v Ong Wui Teck

[2019] SGHC 147

High Court — Originating Summons No 871 of 2017 (Summons No 3979 of 2017)

Belinda Ang Saw Ean J

28 May 2019

10 June 2019

Belinda Ang Saw Ean J:

Introduction

1 On 13 February 2019, I delivered judgment on liability, reserving sentence in [2019] SGHC 30 (“Liability Judgment”). I found Mr Ong Wui Teck (“Mr Ong”) guilty of contempt in the face of the court as well as contempt by scandalising the judiciary in the various manner detailed in the Liability Judgment. At the sentencing hearing that followed on 28 May 2019, Mr Ong was committed to prison for seven days for contempt. He was further ordered to pay legal costs including disbursements to the Attorney-General. Mr Ong has appealed against sentence and duly applied for a stay of execution *vide* HC/SUM 2736 of 2019. On 31 May 2019, I granted a stay of execution on terms pending the appeal.

2 Mr Ong did not attend the hearing on 28 May 2019. Prior to 28 May 2019, Mr Ong informed the Registry of the Supreme Court, in writing, that he

would not file his submissions on sentencing and he further advised that he would not attend the hearing on 28 May 2019. His position throughout was not to avail himself of the opportunity to be heard on sentencing in the light of his pending appeal against the Liability Judgment.

Issue of sentencing

3 The contempt in the present case falls under the category of contempt by interference (*ie*, criminal contempt as explained in *You Xin v Public Prosecutor and another appeal* [2007] 4 SLR(R) 17 (“*You Xin*”) at [16] and affirmed in *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 (“*Shadrake (CA)*”) at [19] and again recently in *Tay Kar Oon v Tahir* [2017] 2 SLR 342 at [34]). In passing sentence, this court noted the sentencing guidelines in *Shadrake (CA)* at [147]. State Counsel, Mr Khoo Boon Jin (“Mr Khoo”), relied on three factors listed in *Shadrake (CA)* that are relevant to the issue of sentencing in this case. They are: (a) the nature and gravity of the contempt; (b) the seriousness of the occasion on which the contempt was committed and the number of contemptuous statements made; and (c) the type and extent of dissemination of the contemptuous statements, and the importance of deterring would-be contemnors from following suit.

4 For expediency, as the facts overlap, the three factors identified by Mr Khoo are considered holistically below.

Gravity of contempt

5 At the heart of the committal proceedings and as noted in the Liability Judgment, a striking feature of Mr Ong’s recusal application was his improper motive to judge-shop (Mr Khoo uses the phrase “forum-shop”) and, to achieve

his objective, he made use of a recusal application to have Justice Woo Bih Li step aside as the Judge assigned to hear the various applications involving his mother's estate (*ie*, Originating Summons No 11 of 2016 ("OS 11"), District Court Appeal No 21 of 2015 ("DCA 21"), Originating Summons No 365 of 2014 and Originating Summons No 763 of 2014, collectively referred to as "Mother's Estate Actions"). Mr Khoo said in his submissions for sentencing that Mr Ong's two affidavits supposedly contained affirmation of the truth of his statements but they were simply allegations known to Mr Ong to be false. Put simply, he deliberately deposed to untruthful evidence in his two affidavits motivated by improper objectives. Plainly, he knew exactly what he was doing to cause a change of a single-judge coram and to get OS 11 and DCA 21 fixed on different hearing dates.¹

6 The Liability Judgment found that the two affidavits portrayed false and misleading versions of events so grave as to constitute contempt being contempt in the face of the court and contempt by scandalising the judiciary. Specifically, the serious allegations in Mr Ong's two affidavits that formed the basis of his recusal application (OS 165 of 2016) were found to be entirely groundless, contrived, dishonest and contemptuous. The Liability Judgment found that the recusal application was reflective of Mr Ong's motive and ulterior purpose: Mr Ong had obviously engaged in a vigorous form of judge-shopping. The telling signs of judge-shopping were evident from the untruthful evidence and contemptuous statements in his affidavits, and the contempt was aggravated in his submissions made in the contempt proceedings. To repeat, his acts and lies

¹ AGC's submissions on sentencing, para 22.

were calculated to achieve the desired result of judge-shopping. Mr Ong pursued his objective with persistence, and it matters not that he committed contempt in the process. In this context, there is culpable conduct. Mr Ong's contempt is very serious.

7 Woo J's decision in the father's estate, in the main involving valuable assets, was favourable to Mr Ong (*ie*, the 2012 Judgment). On other aspects of the father's estate and subsequent applications where Woo J had ruled against Mr Ong, the allegations against Woo J were untrue and contemptuous. Parties were notified that Woo J was assigned to hear the Mother's Estate Actions in January 2016, about four years after Woo J's 2012 Judgment. The dispute in both estates are different but Mr Ong persisted in his unfounded belief that Woo J would rule against Mr Ong in the Mother's Estate Actions in order to cover up Woo J's wrong rulings in the father's estate. Besides attacks against Woo J that constituted contempt in the face of the court, the Liability Judgment found Mr Ong's criticisms of the system of administration of justice and attacks against the court as a whole to constitute scandalising contempt. Both forms of contempt involve wrongful interference with the administration of justice.

Appropriate punishment and sentence

8 Having considered the seriousness of this case, I agreed with Mr Khoo that a fine would be an inappropriate sentence. A litigant who is bent on judge-shopping would be willing to pay a fine if the desired end is achieved and a different single-judge coram is formed. In addition, a fine is not a sufficient penalty given the aggravating factors found in Mr Ong's case.

9 I now turn to the appropriateness of custodial sentence and the length of the sentence. A custodial sentence would mark the seriousness of the contempt. Given the element of public interests in the category of contempt in the present case, the overall sentencing consideration would be deterrence, both general and specific deterrence.

10 Mr Khoo informed the court that there are no specific local decisions where contempt is committed for the purpose of judge-shopping. Mr Khoo drew the court's attention to cases from Hong Kong, Australia and New Zealand for guidance.

11 *Secretary for Justice v Choy Bing Wing* [2005] HKCU 1726 is one such decision on sentencing, where the first instance decision on liability is reported in [2005] HKEC 1971. The respondent, Choy Bing Wing, attempted to secure the recusal of Justice Rogers VP in an appeal and he accused Justice Rogers to have intentionally perverted justice, that the judge was dishonest and that he was a "crook" who fabricated evidence, and that he was a disgrace to the Hong Kong judiciary. The allegations against Justice Rogers constituted a serious interference with the administration of justice and were thus contemptuous. At the liability hearing, the allegations against Justice Rogers were found to be made with a clear objective of ensuring that the appeal coram met with the approval of the respondent. Hartmann and Suffiad JJ rightly said:

72. The attack on Mr Justice Rogers was manifestly pre-mediated and deliberate, the subject matter of a formal application filed with the court. It was made with a specific intent; namely, to ensure that Mr Justice Rogers did not hear the appeal. "Forum shopping" is deprecated. In this instance, the respondent attempted to effectively have the court constituted as he wished by indulging in an abusive attack on the integrity of the individual judge.

12 Being satisfied that the affidavits contained words that scandalised the court to achieve a specific and calculated result, which was the removal of Justice Rogers, and through him the court itself (at [89]), the Hong Kong Court of First Instance (“HKCFI”) imposed a custodial sentence of six months for contempt of court (see sentencing report [2005] HKCU 1726 at [29]). In passing sentence, the HKCFI noted in the sentencing report at [26]–[28] that the respondent’s contempt was grave having been fashioned to self-serve the desires of a single litigant, since the contempt undermined the administration of justice and through that with the rule of law, it must be met with a penalty of imprisonment.

13 *R v Collins* [1954] VLR 46 involved a duly stamped affidavit which was handed to the associate of the Judge. Even though the affidavit had not yet been filed and not read aloud, the Supreme Court of Victoria held that there was sufficient publication for the purposes of scandalising contempt and contempt in the face of the court and sentenced the contemnor to one month in prison. The contemnor had previously been convicted of contempt in the past.

14 In *Re Wiseman* [1969] NZLR 55, the contemnor, who published contemptuous allegations in four affidavits filed in the Supreme Court of Auckland and served on the Crown Law Office, as well as a notice of motion on appeal to the New Zealand Court of Appeal, was found guilty of scandalising contempt and was imprisoned for three months. The contemnor was a first-time offender, whose expression of regret was found not to be sincere, had not made any genuine effort to purge his contempt.

15 As regards the authorities in Singapore on contempt in the face of the court and scandalising contempt, the custodial sentences have not been as high as those imposed abroad. In *Attorney-General v Chee Soon Juan* [2006] 2 SLR(R) 650 (“*2006 Chee*”), the respondent filed a bankruptcy statement that alleged that the Singapore judiciary was biased and unfair, amongst other things, and he read out the bankruptcy statement in chambers before an Assistant Registrar. The respondent was a first-time offender who did not purge his contempt and maintained the allegations in the bankruptcy statement. He was convicted of scandalising contempt and contempt in the face of the court and sentenced to one day’s imprisonment and a fine of \$6,000, seven days’ imprisonment in default.

16 *You Xin* and *Lee Hsien Loong v Singapore Democratic Party & Ors* [2009] 1 SLR (R) 642 (“*Lee Hsien Loong v SDP*”) were cases where the contempt in the face of the court and scandalising contempt were committed in open court. Contemptuous behaviour before the court warranted a sentence of imprisonment. In *You Xin*, the contemnors were first-time offenders who did not apologise for their conduct. They were each sentenced to two days’ imprisonment. In *Lee Hsien Loong v SDP*, there were two contemnors. Both refused to retract their contemptuous statements or apologise. For scandalising contempt and contempt in the face of the court, the first-time offender was sentenced to 10 days’ imprisonment and the second contemnor, who had committed contempt previously, was sentenced to 12 days’ imprisonment.

17 In *Attorney-General v Tan Liang Joo John and others* [2009] 2 SLR (R) 1132, three respondents wore T-shirts imprinted with a picture of a kangaroo dressed in a Judge’s robe and they stood within and in the vicinity of the

Supreme Court. On another date, the first respondent, John Tan, wore the same T-shirt and posted (or acquiesced in the posting) on a website a photograph of the respondents wearing the T-shirts and standing outside the Supreme Court building. The three respondents were first-time offenders who refused to apologise. They were convicted of scandalising contempt. The first respondent was sentenced to 15 days' imprisonment; the remaining two other respondents were each sentenced to seven days' imprisonment.

18 With the above cases in mind, in coming to my decision on the appropriateness of custodial sentence as a deterrence (general and specific) and the length of any sentence, the following matters were considered. First, Mr Ong is a litigant in person. However, Mr Ong came across as an educated person who is more than capable of self-representation. There was every indication of his comprehension of the proceedings. He is an intelligent man who understood the gravity of the contempt proceedings and has had no difficulty conducting his own defence. I do not regard his lack of legal representation to be in anyway prejudicial or that he had been in any way disadvantaged by self-representation. Second, Mr Ong was given an opportunity to purge his contempt before the Attorney-General applied for leave to initiate committal proceedings against Mr Ong. He refused to back down. From this perspective, he brought on himself the committal proceedings. Third, throughout the committal proceedings, Mr Ong was not remorseful and aggravated his contempt in his submissions at the committal proceedings. He remains unremorseful up until the hearing on 28 May 2019. He steadfastly refuses to apologise and continues to hold the view that he had done nothing wrong or was justified in what he did. Finally, and above all, Mr Ong made use of the recusal application to achieve a singular result, willing to commit contempt in the course of his effort to judge-shop

which in itself is a blight on the proper and due administration of justice. On account of this, his contempt was deliberate, sustained and motivated, all of which are serious aggravating factors.

19 In the course of his submissions, Mr Khoo, fairly, drew to the court's attention possible arguments that Mr Ong may have wished to make in mitigation if he were present at the sentencing hearing. The broad points are as follows. First, a possible plea of leniency since publication in affidavits for a matter heard in chambers are different from publication in a book or newspaper. In other words, the dissemination of his contemptuous statements is limited. This point on limited publication has been considered in the Liability Judgment and rejected. Besides, Mr Ong's type of conduct containing lies in affidavits to achieve a calculated result showed that he was not acting in good faith and any excuse that he was engaging in fair criticism of Woo J was dishonest and like in *Choy Bing Wing*, the "attacks were not susceptible of any form of reasoned answer" (see report on liability at [89]). I agreed with Mr Khoo's point that the seriousness of judge-shopping outweighs the matter of dissemination. Second, Mr Ong's age could have been argued as a mitigating factor. Mr Khoo submitted that Mr Ong is about 64 years old. Although age could be a mitigating factor for a lengthy sentence, Mr Khoo asked the court to impose a custodial sentence of at least seven days, and by all counts, a duration of seven days is short. Hence, age is not a mitigating factor in the present case. I agreed with Mr Khoo on this point. Finally, Mr Ong appears to be a first-time contemnor and this fact was noted by this court in sentencing.

20 Having regard to the requirements of punishment and deterrence, I ordered a custodial sentence of seven days. Like Justice Lai Siu Chiu said in

2006 Chee at [61], seven days is a notice and a warning to would-be litigants who deliberately take out a recusal application calculated to judge-shop. In addition, a custodial sentence of seven days is within the range of punishment consistent with local authorities. As stated, Mr Ong was ordered to pay the costs of SUM No 3979 of 2017 fixed at \$24,000 plus disbursements of \$5,625.91.

Belinda Ang Saw Ean
Judge

Khoo Boo Jin, Elaine Liew and May Ng (Attorney-General's
Chambers) for the applicant;
The respondent in person and absent.
