

IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

[2008] SGDC 111

DAC 49996 of 2008
Magistrate's Appeal No. 108/2008/01

Public Prosecutor

Against

Yeo Keong We @ Roy

GROUNDS OF DECISION

Public Prosecutor
v
Yeo Keong We @ Roy

[2008] SGDC 111

DAC 49996 of 2008
District Judge Toh Yung Cheong
30 April 2008

Judgment reserved.

15 May 2008

District Judge Toh Yung Cheong

1. The accused pleaded guilty to the following charge of cheating under s.420 of the Penal Code (Cap 224):

You, Yeo Keong We @ Roy, are charged that you from May 2003 to October 2003, in Singapore, did cheat one Tan Hock Keong by deceiving him into believing that you can help him to earn 1.1% profit per day from a Multi Level Marketing (MLM) investment program when you knew the facts to be false, and by such manner of deception, you dishonestly induced the said Tan Hock Keong to deliver to you \$194,000/- for the said investment program, which he would not have done had he not been so deceived and you have thereby committed an offence punishable under section 420 of the Penal Code, Chapter 224

2. Three similar charges were taken into consideration for the purpose of sentencing. As the accused has appealed against the sentence imposed, I will now set out the reasons for my decision

Facts

3. Sometime in late 2002, the accused began to market an investment scheme promising returns of 1% to 1.1% daily for a period of 365 days. The accused claimed that the returns would be generated from investing in various

multi-level marketing (MLM) programs via the internet. The accused claimed that he had two partners, Abraham Ford in the United Kingdom and John Peterson in the United States.

4. Sometime in May 2003, Tan Hock Keong (“Tan”) was introduced to the accused’s investment scheme by his friend Wong Fook Cheong. Tan met the accused who then explained the investment to him as an internet MLM investment program which was a profit-making program with no risk. The accused promised Tan that he would recover his capital investment within three months and that he would receive daily returns of 1.1% of his investment for 365 days. The accused also told Tan that the funds would be invested in the USA.

5. As a result of what the accused told him, Tan decided to invest his money with the accused. His friend Wong also invested money with the accused around the same time.

6. Between May 2003 and October 2003, Tan invested a total of \$194,000 with the accused, of which \$137,200 was handed over in cash to the accused and \$56,800 were in re-invested returns. In September and October 2003, the accused was actually unable to pay Tan his returns. Instead, the amounts due to Tan from the accused each week were “re-invested” into the accused’s scheme.

7. In reality, the accused did not invest in any internet MLM investment program as part of the investment scheme, nor were there any investments done in the US, as he had told Tan. The accused also did not have any overseas partners named Abraham Ford and John Peterson. The accused had in fact used the monies collected from the investors to pay out the returns to the investors themselves. The accused dishonestly concealed the fact that Tan’s returns were paid out from the subsequent investments of other investors. In total, Tan had received \$51,788.30 in “returns” from the accused.

Prescribed Punishment

8. The offence is punishable with mandatory imprisonment for a term of not more than seven years and the offender may also be liable to a fine.

Previous Conviction

9. When the accused pleaded guilty before me, he was serving a 39-month sentence for cheating charges that formed the subject matter of Magistrate's Appeal 152 of 2007. Apart from this, he has no previous convictions.

Mitigation

10. Counsel pointed out that while the charge stated that Tan had been deceived into investing \$194,000 with the accused, the actual "out-of-pocket" loss to Tan was only \$85,411.70. This is due to the fact that the \$194,000 stated in the charge comprises \$137,200 which Tan actually gave the accused and \$56,800 which represents a reinvestment of his returns. In addition, \$51,788.30 in returns was actually paid to Tan. In the circumstances, Counsel urged the court to treat this as a cheating case involving \$85,411.70 rather than a cheating case involving \$194,000.

11. Counsel also urged the court to order the sentence to commence from the date of conviction. In effect, this would mean that the sentence would run concurrently with the sentence the accused was serving. His main argument was that all the charges originated from the same investment scheme and therefore the "one-transaction" rule applied.

12. Finally, Counsel referred to two previous cases, *PP v Ang Eng Loo* (MA 186/93) where a sentence of 12 months' imprisonment was imposed where the loss amounted to \$254,586.88 and *Yap Lip Yeong v PP* (MA

352/93) where a sentence of 18 months' imprisonment was imposed where the loss amounted to \$924,942.00.

My Decision

Seriousness of the offence

13. I began my assessment of the appropriate sentence by looking at the seriousness of the offence. I took into account the amount of money involved and the nature of the criminal enterprise. In particular, I took note of the fact that this was a ponzi scheme where the initial returns paid out to Tan were from monies invested by subsequent investors. Such schemes, if left unchecked, can quickly ensnare large numbers of unsuspecting victims. Furthermore, Tan also operated behind a sophisticated cover story involving internet MLM programs and foreign partners.

14. The seriousness of the offence is also related to the number of victims the accused deceived. In *PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR 334, Justice VK Rajah stated the following at [48] in relation to serial cheating offences:

... I would add that sentences meted out in serial cheating cases should not be only "slightly higher" as compared to that assigned to a single offender for the same quantum. The sentence could in the appropriate circumstances be *significantly* higher. *A serial offender would be hard put to credibly submit that his conduct was the result of a momentary indiscretion.*

15. In determining that the accused had cheated a number of different victims, I was of the view that I was entitled to look not only at charge proceeded with but also at the similar charges that were taken into consideration.

16. In particular the three charges taken into consideration involve different victims; namely, Kwong Siew Fong, Ho Poh Cheong, and Hew Chin Keong. These three charges involve a total amount of \$348,880. Charges that are taken into consideration have the effect of enhancing the sentence that would otherwise be awarded: *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [19].

Sentencing Precedent

17. The 1993 sentencing precedents cited by Counsel were also relied upon by Counsel in the accused's previous case¹. Like the District Judge in the accused's previous case, I found other cases such as *Rahj Kamal bin Abdullah v PP* [1998] 1 SLR 447 to be more relevant.

18. In addition, I took note of the sentence imposed in *Tan Poh Choon v PP* MA 155/2005 (unreported)². In this case, the offender was convicted after a trial on 10 charges of cheating 10 different investors by getting them to invest in a fraudulent high yield investment programme called the "Dynamic 2% program" which offered investors a return of 2% per trading day. The total amount invested by the 10 investors was US\$19,910, much less than the amount involved in the present case. Furthermore, two of the investors managed to withdraw their investment and ultimately suffered no loss. However, I note that the scheme to defraud investors in *Tan Poh Choon* was a more complex one and there were a larger number of victims. The offender was sentenced to 18 months imprisonment in total and his appeal against conviction was dismissed by the High Court.³

¹ [2007] SGDC 329

² The facts of the case can be found in the district court's judgment at [2006] SGDC 10

³ The offender also faced 59 similar charges that were stood down pending the outcome of the hearing of the appeal. At the time of preparing this judgment, these charges are still pending as the offender had only been recently rearrested after he absconded while on bail.

Effect of the plea of guilt

19. Next, I considered the issue of the accused's plea of guilt and the question of restitution in the context of the remorse-based approach set out in *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653. In *Angliss*, Justice Rajah stated at [77] that:

A plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice. The mitigating effect should also be compatible with the sentencing purpose(s) and principles the sentencing judge is seeking to achieve and observe through the sentence.

20. There was insufficient evidence before me to show that the accused's plea of guilt was motivated by remorse. In fact, the circumstances surrounding his plea of guilt suggest that it was a tactical move. The accused could have asked to plead guilty to the rest of the charges before the trial judge after his conviction on the first set of charges. This would have allowed the trial judge to deal with all the charges together. However the accused did not do so and appealed against his conviction and sentence. It was only after the High Court declared in no uncertain terms that "On the evidence, clearly, there was no genuine Internet Investment scheme. It was merely a scam to cheat people of their money"⁴ that the accused decided to plead guilty to the remaining charges.

21. Another way in which remorse can be manifested is by the making of restitution to the victims. On the facts of the case, it is not disputed that the accused returned \$51,788.30 to Tan in the form of investment returns. However, the accused did not give this money to Tan because he was remorseful for cheating him; instead, the paying of some returns to the victim was an essential part of any ponzi scheme. These "returns" lull the victims and potential investors into a false sense of security. The only reason why a ponzi scheme pays returns is in order to induce victims and potential victims to invest even larger sums of money with the fraudster.

22. Therefore, on the face of it, there is no evidence that the accused made any restitution out of remorse for committing the offence. In addition, there is no evidence that the accused had assisted the police to trace the funds that he had taken from his victims. Given the large sum of money involved, there ought to have been evidence available to show where the money had gone. As the accused continues not to be forthcoming with this information, a court could reasonably conclude that he had secreted some these funds out of the reach of the Singapore authorities and was planning to enjoy his ill-gotten gains once he is released from prison. In any event, there was no need for me to make this finding as the only issue before me was whether there was evidence of remorse.

23. Given the lack of evidence that the accused was genuinely remorseful, I was of the view that the accused's plea of guilt carried little weight.

Date of Commencement of sentence

24. In the present case, the sentence that the accused actually serves would be affected by my decision on whether to order the sentence to commence immediately or on expiry of the accused's current sentence.

25. In deciding this issue, I referred to the guidance from the High Court in the case of *Teo Kian Leong v PP* [2002] 2 SLR 119. In *Teo Kian Leong*, the offender initially faced a total of 11 charges under s.102(b) of the Securities Industry Act (Cap 289) for engaging in acts connected with the purchase and sale of securities, which operated as a deceit on another person. These 11 charges related to 11 different individuals, and each of these 11 charges related to a number of share transactions. The prosecution proceeded on eight of these 11 charges while the remaining three charges were stood down.

⁴ Oral remarks by Justice Tay Yong Kwang in MA 152/2007 (unreported).

26. The offender claimed trial to the eight charges and was eventually convicted of all eight charges. He was sentenced to a total sentence of 12 months. The offender appealed against his sentence and conviction but his appeal was dismissed by the High Court. After the hearing of his appeal, he pleaded guilty to one of the three remaining charges and agreed to the other two remaining charges being taken into consideration for the purpose of sentence. He was sentenced to six months' imprisonment with the sentence ordered to commence at the expiry of the existing sentence.

27. Yong CJ observed at [7] that the discretion to make a subsequent sentence commence on expiry of a current sentence must be exercised "judiciously" and that the court should have regard to the one transaction rule and the totality principle. In particular, he observed at [8] that:

In contemplating the totality of the sentences which the accused has to undergo, a question that the presiding judge can consider is: If all the offences had been before him, would he still have passed a sentence of similar length? If not, the judge should adjust the sentence to be imposed for the latest offence in the light of the aggregate sentence: see *Millen* (1980) 2 Cr App R (S) 357 and *Watts* [2000] 1 Cr App R (S) 460. Whether this is done by imposing a shorter sentence to run consecutively or a longer sentence to commence immediately, does not at the end of the day make much difference, although in principle, the judge should as far as possible try to impose a sentence that is reflective of the gravity of the latest offence(s) in question.

28. Following the guidance of the High Court, I referred to the sentencing principle known as the one-transaction rule. The one-transaction was explained by the Court of Appeal in *Kanagasuntharam v PP* [1992] 1 SLR 81 at [5]-[6]

In considering the appeal, our first concern was whether the sentences in this case should run concurrently or consecutively as the offences took place in a short space of time and were against the same victim. At common law, this would be a situation where the sentencing principle commonly known as the one transaction rule would be likely to apply. The rule may be stated shortly: where two or more offences are committed in the course of a single transaction, all sentences in respect of these offences should be concurrent rather than consecutive. The difficulty, of course, is with the question of what constitutes one transaction and this question is necessarily one of fact depending on all the circumstances of the case. ...

The general rule, however, is not an absolute rule. The English courts have recognized that there are situations where consecutive sentences are necessary to discourage the type of criminal conduct being punished ... The applicability of the exception is said to depend on the facts of the case and the circumstances of the offence. It is stated in broad and general terms and although it may be criticized as vague, it is necessarily in such terms in order that the sentencer may impose an appropriate sentence in each particular case upon each particular offender at the particular time the case is heard.

29. In *PP v Law Aik Meng* [2007] 2 SLR 814, Justice V K Rajah explained at [56]:

Indeed, in *Sentencing and Criminal Justice* ([25(b)] *supra*), Prof Ashworth has also perceptively remarked that one stumbling block in constructing a workable definition of a “single transaction” for the one-transaction rule is that “it seems to be little more than a pragmatic device for limiting overall sentences rather than a reflection of a sharp category distinction”: see p 244. Therefore, where consecutive sentences are in keeping with the gravity of the offences, courts should not impose concurrent sentences simply because they feel fettered by the presumed operation of the one-transaction rule. I am persuaded in any event that even if the offences in the present case might conceivably be perceived as part of a single transaction, consecutive sentences are nonetheless not only more appropriate here, they are in fact dictated by the gravity of the offences involved.

30. In *PP v Law Aik Meng* and *Navaseelan Balasingam v PP* [2007] 1 SLR 767, the offenders were charged with offences related to the unauthorised withdrawal of cash from a large number of automated-teller machines (ATM) using counterfeit ATM cards. An argument was raised that the various ATM withdrawals formed part of “one transaction” and therefore the rule should apply to limit the number of charges that were ordered to run consecutively. In both these cases, the High Court was of the view that withdrawals from different ATM machines in various parts of the island could not be viewed as “one transaction”⁵.

31. Applying these principles to the present case, all the cheating charges (i.e. those in the present case and those relating to MA 152/2007) involved different victims who invested independently of each other. As such, I was of

⁵ *Navaseelan* at [25], *Law Aik Meng* at [54]

the view that each charge represented a separate transaction and that the one-transaction rule did not apply.

32. Next, I considered the totality principle. The High Court has affirmed that the sentence of 39 months imprisonment in MA 152/2007 was not manifestly excessive. The charges before the High Court related to two victims giving the accused \$218,000 and \$348,670 respectively. The total amount delivered to the accused was therefore \$566,670.

33. In respect of the present charge of which the accused pleaded guilty to, it involved the victim Tan delivering \$137,200 to the accused. In addition, the charges taken into consideration involve an amount totaling \$348,880. I accept that like the other charges, part of the \$348,880 may relate to a re-invested amount. But whatever the case, the amount involved in the present case is still sizeable.

34. The next issue I had to determine was the quantum of the sentence. Adopting the approach in *Teo Kian Leong*, I considered the question of whether, if all the offences had been before me, I would have passed a sentence of similar length. If all the charges had been dealt with by one judge, the charges would involve a total amount of \$1,052,750.⁶ In my view, given the lack of restitution as well as a lack of evidence of genuine remorse, I would have considered a sentence in excess of four and a half years to be appropriate if I had dealt with all the charges together.

⁶ The amount is calculated by adding up the following amounts: DAC 49994/06: \$218,000, DAC 49995/06: \$348,670, DAC 49996/06: \$137,200, DAC 49993/06: \$36,000, DAC 49997/06: \$280,000, DAC 49998/06: \$32,880. I accept that the actual loss for the charges that were taken into consideration may be lower than the figure stated on the face of the charges as part of the money may have been a “reinvestment.”

Sentence Imposed

35. After careful consideration, I was of the view that a sentence of 15 months' imprisonment was an appropriate sentence and that it should be ordered to commence on expiry of the accused's current sentence. The accused will therefore have to serve a total sentence of four and a half years.

36. At the time of preparing this judgment, the accused is serving sentence.

Toh Yung Cheong
District Judge

*Mr Ram Vishal Tiwary (Assistant Public Prosecutor) for the Prosecution;
Mr S. Maginthiran (M/s Netto & Magin LLC) for the Accused.*
