

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 217

Magistrate's Appeal No 9073 of 2022

Between

Xu Yuanchen

... Appellant

And

Public Prosecutor

... Respondent

BRIEF REMARKS

[Criminal Procedure and Sentencing — Sentencing]

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Xu Yuanchen
v
Public Prosecutor

[2023] SGHC 217

General Division of the High Court — Magistrate's Appeal No 9073 of 2022
Aedit Abdullah J
4 August 2023

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Aedit Abdullah J:

Introduction

1 These are my brief remarks which I publish essentially as an addendum to my previous decision in *Xu Yuanchen v Public Prosecutor and another appeal* [2023] SGHC 123. It is subject to full grounds being issued if a criminal reference is pursued.

2 The appellant here served a term of imprisonment of three weeks below on the charge he was convicted of; on appeal, I reduced the sentence imposed to a fine of \$8,000, in default, two weeks' imprisonment. The parties to the appeal are before me as there is disagreement about whether the previously served imprisonment of three weeks could count as, or be set off against, the default sentence of two weeks.

3 Any member of the public would be surprised, I think, that the three weeks previously served does not count, and that the appellant remains liable to either serve two weeks' imprisonment, piled on top of the previous three weeks, or pay \$8,000, or be subject to enforcement for that \$8,000. The reduction of sentence imposed by the court in effect makes his punishment more severe: the appellant would have been better off had he lost his appeal.

4 I will not at this time attempt to summarize or address all the arguments put forward. It suffices for me to briefly note that the Prosecution argues that on the proper interpretation of ss 318 and 319 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), no mechanism for the backdating of a default term is provided for or contemplated, and that it is not within the framework of punishment through a fine.

5 It suffices for me to note that the default sentence is not just a mechanism to encourage payment. It is punishment, as anyone who has served a default sentence will attest. You are in prison. You are deprived of your liberty. You are not free.

6 A Malaysian case, *Irwan bin Abdullah & Ors v Public Prosecutor* [2002] 2 MLJ 577, was cited to me. With great respect, I do not find that it assists: it was concerned with remand rather than punishment. In addition, in so far as it stands for anything more than its context allows, I would decline to follow it.

7 What I do turn to is s 6 of the CPC, which reads:

6. As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force, such procedure as the justice of

the case may require, and which is not inconsistent with this Code or such other law, may be adopted.

The Prosecution argues essentially that there is in the end no gap in the law.

8 I would disagree. There is a real, substantial gap. There is unfairness. And the justice of the case requires that I adopt a procedure as regards the determination of the default sentence for the fine that takes into account the previously served imprisonment.

9 It is not an answer that the appellant chose at the time to serve the sentence imposed below: there could be various reasons for choosing to do so, but which should still not lead to an injustice.

10 Accordingly, I rule that the previously served sentence should be treated as going towards the default sentence imposed on the appellant, and thus nothing remains to be served or paid under the sentence I pronounced in the appeal by the appellant.

Aedit Abdullah
Judge of the High Court

Choo Zheng Xi and Yuen Ai Zhen Carol (Remy Choo Chambers
LLC) for the appellant;
Mohamed Faizal SC, Norine Tan and Niranjana Ranjakunalan
(Attorney-General's Chambers) for the respondent.