

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 26

Criminal Motion No 31 of 2024

Between

Moad Fadzir bin Mustaffa

... Applicant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review]

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Moad Fadzir bin Mustaffa

v

Public Prosecutor

[2024] SGCA 26

Court of Appeal — Criminal Motion No 31 of 2024
Tay Yong Kwang JCA, Steven Chong JCA and Woo Bih Li JAD
1 August 2024

2 August 2024

Tay Yong Kwang JCA (delivering the judgment of the court):

1 Mr Moad Fadzir bin Mustaffa (“Mr Moad Fadzir”), a prisoner awaiting capital punishment (“PACP”), has applied to the Court of Appeal (“CA”) in the evening of 1 August 2024, the eve of his scheduled execution, for a stay of execution.

2 In his handwritten application, he asks that the CA exercise its inherent jurisdiction and/or power under Arts 93 and 94 of the Constitution to stay the execution and on the basis that he is one of the appellants in a pending civil appeal against the dismissal of HC/OA 306 of 2024 (“OA 306/2024”). The pending civil appeal that Mr Moad Fadzir is referring to is CA/CA 38 of 2024 (“CA 38”).

3 This morning (2 August 2024), Mr Moad Fadzir filed another affidavit which contains his amended Criminal Motion (“CM”). In his amended CM, he has deleted reference to the pending civil appeal and now asks:

That the court exercise its jurisdiction and power to order a stay on the basis that the applicant intends to file review application to review his criminal case.

His second affidavit is essentially the same as his first save that he has corrected an error in the date he was informed of his scheduled execution.

4 The pending civil appeal in CA 38 relates to the decision of Dedar Singh Gill J to strike out OA 306/2024 in its entirety as it disclosed no reasonable cause of action. In OA 306/2024, a number of PACPs sought a declaration that the policy of not assigning counsel under LASCO (Legal Assistance Scheme for Capital Offences) for the purposes of post-appeal applications was unconstitutional.

5 Mr Moad Fadzir states in his affidavits that:

7 this situation has hinder me to obtain counsel for my intended post-appeal review application (civil and judicial review application) [note: the words in brackets were absent in Mr Moad Fadzir’s first affidavit].

8 I wrote to LASCO requesting for counsel’s assistance but was rejected.

9 Bringing forth OA 306/2024 to the court’s attention for necessary intervention to address the issue which we have been going through is my sincere way to seek solution in a proper channel. We are helpless in this situation in a proper way and our family also face the same challenge to obtain counsel service.

6 We note that after Mr Moad Fadzir’s appeal against conviction was dismissed by the CA in 2019, he made three applications for permission to file review applications against his conviction. The latest judgment in CA/CM 29

of 2024 delivered by Tay Yong Kwang JCA on 30 July 2024 provides a synopsis of the procedural history of his case.

7 The first application was filed in 2020, two days before the original scheduled date of his execution, through his then counsel, Mr Ravi s/o Madasamy. The second and third applications (CA/CM 15 of 2024 and CA/CM 29 of 2024) were filed in 2024 through his counsel, Mr Ong Ying Ping. All three applications were dismissed summarily as they had no merit. The judgments in the second and third applications highlighted that the Criminal Procedure Code 2010 (2020 Rev Ed) (“CPC”) provisions on reviews prohibited repeat review applications or any application to review a decision made on an application for permission to review.

8 It can be seen from the above that Mr Moad Fadzir had legal advice post-appeal, in 2020 and 2024, from two lawyers of many years’ standing. He therefore was not deprived of any ability to file post-appeal applications with legal advice.

9 As stated by Mr Moad Fadzir in his affidavits, if the appeal against the decision in OA 306/2024 is decided in his favour, all it means is that he “may conceivably apply for assistance from Legal Assistance Scheme for Capital Offences to assist him in filing his intended review application”. However, even if his appeal succeeds and his application for LASCO counsel is approved, he is barred from filing any further review applications against his conviction or against a decision on a review application as mentioned in para 7 above. The outcome of that appeal therefore can have no bearing on his conviction or sentence. In any event, apart from stating that he hopes to secure LASCO counsel for his “intended post-appeal review application”, he has not provided

any ground which is different from his previous three unsuccessful review applications.

10 For completeness, when the CA granted a stay of his scheduled execution in April 2024, it was because the Prosecution had sought an extension of time to review the issues raised by him in CA/CM 15 of 2024. The stay was not granted on account of the pending appeal in issue in OA 306/2024, contrary to what Mr Moad Fadzir seems to be suggesting in his affidavits.

11 Accordingly, we find no reason whatsoever to grant another stay of Mr Moad Fadzir's execution scheduled to take place between 6am and 6pm today.

12 We therefore dismiss this application pursuant to s 238A(1) of the CPC.

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Applicant in person;
Wong Woon Kwong SC and Sarah Siaw for the respondent.