

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 78

Magistrate's Appeal 9002 of 2016

Between

Public Prosecutor

... Appellant

And

Osi Maria Elenora Protacio

... Respondent

ORAL JUDGMENT

[Criminal Law] — [Offences] — [Property] — [Criminal breach of trust]
[Criminal Law] — [Statutory offences] — [Penal Code]

This judgment is subject to final editorial corrections to be approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Osi Maria Elenora Protacio

[2016] SGHC 78

High Court — Magistrate's Appeal No 9002 of 2016/01
Chan Seng Onn J
21 April 2016

21 April 2016

Chan Seng Onn J

Introduction

1 This is an appeal by the Public Prosecutor (“the Prosecution”) against the District Court’s sentence imposed on Osi Maria Elenora Protacio (“the Respondent”) for one charge of committing criminal breach of trust (“CBT”) in respect of cash amounting to \$14,089.95 which she was entrusted with dominion over (see the District Judge’s Grounds of Decision (“the GD”) in [2016] SGDC 5).

2 A fine of \$4,000 was imposed on the Respondent for the CBT offence. I am of the view that the sentence is manifestly inadequate in light of sentencing precedents. I allow the appeal accordingly, and order the Respondent’s sentence to be enhanced to 15 weeks’ imprisonment.

Background and decision below

3 The Respondent is a 41-year-old female working at a dental clinic, Dental Essence at 127 Tanglin Road (“the Clinic”) as a receptionist. Her job responsibilities included, among others, collecting payments from customers and depositing these monies into the Clinic’s bank account.

4 The Respondent pleaded guilty to one charge of CBT under s 406 of the Penal Code (Cap 224, 2008 Rev Ed) for dishonest misappropriation of S\$14,089.95 between 4 January 2014 and 24 December 2014 at the Clinic. Another charge of CBT under the same provision in respect of dishonest misappropriation of \$12,534.30 between 2 January 2015 and 20 August 2015 was taken into consideration for the purposes of sentencing (“the TIC charge”) with the Respondent’s consent. A total of \$26,624.25 (“the Misappropriated Funds”) was misappropriated by the Respondent.

5 The Misappropriated Funds were discovered to be unaccounted for by an external auditor on 7 September 2015. Thereafter, a director at the Clinic interviewed the Respondent and the latter admitted that she had dishonestly misappropriated them. Instead of depositing the Misappropriated Funds into the Clinic’s bank account, she had used them to settle her personal debts. The Respondent is untraced, and has since made full restitution.

6 Despite acknowledging that a sentence of imprisonment would usually be imposed for CBT offences even for first-time offenders unless the property misappropriated was of a low value (and acknowledging that the amount involved in this case was not small), the District Judge concluded that a heavy fine was warranted due to “compassionate grounds” (see [3]–[4] of the GD).

My decision

7 The Prosecution has provided five reported cases with similar facts for my consideration, and a useful summary in tabular form that encapsulates the relevant comparators for sentencing:

Table 1: Relevant Sentencing Precedents

Cases	<i>Teo Sor Hwee v PP</i> [2007] SGDC 323	<i>Tham Whye Tong v PP</i> [2001] SGDC 137	<i>PP v Lim Yew Heng</i> [2013] SGDC 104	<i>PP v Yaw Kee Shen</i> [2012] SGDC 72	<i>PP v Chan King Wui</i> [2013] SGDC 151	The Present Case
Amount in proceeded charges	\$10,984.29	\$13,547.57	\$12,332.00	\$21,739.00	\$24,527.88	\$14,089.95
Total amount involved	\$13,498.96	\$13,547.57	\$16,482.00	\$23,939.00	\$24,527.88	\$26,624.25

Period of offence(s)	About 18 months	About 4 months	About 1.5 months	About 9 months	About 11 months	About 19 months
Pleaded guilty	Yes					
Full restitution	Yes					
Clean record	Yes					
Sentence	8 weeks' imprisonment	3 months' imprisonment	3 months' imprisonment	4 months' imprisonment	4 months' imprisonment	\$4,000.00 fine

8 The Prosecution is submitting that the sentence in the present case should be enhanced to 4 months' imprisonment, based on precedents, taking into account the substantial amount misappropriated and the long period over which the misappropriation took place. I am of the view that the District Judge had placed insufficient weight on these two aggravating factors, and too much weight on the mitigating factors such as the Respondent's clean record, plea of guilt, full restitution and difficult financial circumstances. Only in "rare" and "very exceptional or extreme circumstances" would an accused's financial hardship be treated as a mitigating factor (*Lai Oei Mui Jenny v PP* [1993] 2 SLR(R) 406 at [10]). These are not borne out based on the present facts. One cannot modify a sentence merely because the family will suffer.

9 Furthermore, the existing precedents set out above all *also* involved accused persons who pleaded guilty, made full restitution and had clean records (see Table 1 above). Even after taking into account these mitigating factors, a more appropriate sentence here would be 15 weeks' imprisonment (which works out to be about 3.44 months' imprisonment based on 1 month being, on average, the equivalent of 4.36 weeks). A \$4,000 fine is a marked and inconsistent departure from the precedents that is unjustified.

10 Based on the sum of \$14,089.95 misappropriated in the proceeded charge, the present case would be comparable to the figures involved in the proceeded charges in *Tham Whye Tong* and *Lim Yew Heng*. However, taking into account the TIC charge and the large sum of \$26,624.25 that made up the Misappropriated Funds, as well as the extensive length of time the Respondent was engaged in dishonest misappropriation (19 months as opposed to just 4 and 1.5 months in *Tham Whye Tong* and *Lim Yew Heng* respectively), the sentence given should be adjusted upwards to reflect these aggravating factors.

Conclusion

11 Both specific and general deterrence are key sentencing considerations where CBT offences are concerned (see *Tan Kim Hock Anthony v PP* [2014] 2 SLR 795 at [43]). The \$4,000 fine imposed for an offence involving a large sum of money is too lenient in light of the precedents, and would also fail to achieve the sentencing objective of deterrence. I therefore allow the Prosecution's appeal on sentence, and order that the Respondent's sentence be enhanced to 15 weeks' imprisonment instead.

Chan Seng Onn
Judge

Tan Zhongshan (Attorney-General's Chambers) for the appellant;
The respondent in person.
