

Case Digest (English Translation)

HKSAR v 陳冠旭 (Chan Kwun Yuk)

WKCC 2145/2022; [2022] HKMagC 7
(West Kowloon Magistrates' Courts)

(Full text of the Court's Reasons for Sentence in Chinese at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=147378&currpage=T)

Before: Mr Law Tak-chuen Peter, Principal Magistrate

Date of Sentence: 16 September 2022

Sentencing – doing acts with seditious intention – guilty plea – publishing seditious posts on online social media platform – court making reference to NSL case law – continuing for about a year and a half

1. The Defendant pleaded guilty to one count of doing one or more acts with a seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200). Between 17 January 2021 and 14 June 2022, the Defendant published a total of 44 seditious posts in his two Instagram accounts. On every occasion, the Defendant repeated the slogans of “Liberate Hong Kong, Revolution of Our Times”, “Hong Kong Independence”, Resist, etc. The Defendant also displayed some photographs of the earlier social unrest and violent destruction, and published some seditious posters. Each post was accompanied by statements written by the Defendant himself.

2. Held, sentencing the Defendant to 5 months' imprisonment, that:

- (a) The Court of Appeal in *HKSAR v Ma Chun Man* [2022] HKCA 1151 identified various factors that needed to be considered when assessing the seriousness of a case of incitement to secession under NSL 21. Although the offence in *Ma Chun Man* was different from that in this case, the Court of Final Appeal held in *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42 that an offence of sedition was an offence endangering national security. Even though the charges were different, they were of the same category. Besides, both of them involved seditious acts. Hence, the factors mentioned in *Ma Chun Man* were

applicable to this case.

- (b) The posts mentioned resistance, independence, revolution, etc., and some of the photographs posted by the Defendant showed the traces left behind after serious violence. The statements written by the Defendant himself were also quite seditious.
- (c) The offence continued for almost a year and a half, indicating that the Defendant hoped that those messages would not be forgotten and could continue.
- (d) The primary purpose of seditious acts was to arouse people's emotions. Its success did not depend on whether or not the targets had responded or replied.
- (e) The risk of a resurgence caused by seditious acts committed in circumstances where people had not yet calmed down should not be disregarded.
- (f) It was appropriate to impose a deterrent sentence even though the accused person was a first-time offender.
- (g) The court adopted 7.5 months as the starting point for sentencing, which was reduced to 5 months after one-third discount on account of the guilty plea. Save for this, there were no grounds for further reducing the sentence.

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