Public Prosecutor *v* Tan Peng Khoon
[2015] SGHC 298

Case Number	: Criminal Motion 38 of 2015
Decision Date	: 13 November 2015
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ
Counsel Name(s)	: Gordon Oh, Leong Wing Tuck and Victoria Ting (Attorney-General's Chambers) for the applicant; Respondent in person; Liu Zeming (Baker Mckenzie Wong & Leow LLC) as young amicus curiae
Parties	: PUBLIC PROSECUTOR — TAN PENG KHOON

Criminal Procedure and Sentencing – Extension of time

13 November 2015

Sundaresh Menon CJ:

1 This was a criminal motion brought by the Prosecution pursuant to s 380(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") seeking an extension of time to file a Petition of Appeal against the sentence that was imposed on the respondent by a district judge in *Public Prosecutor v Tan Peng Khoon* [2015] SGDC 94. The Prosecution contended that by reason of various aggravating factors in this case, the sentence imposed was manifestly inadequate having regard to the relevant sentencing precedents.

2 The respondent, Tan Peng Khoon, was sentenced to 9 months' imprisonment following his trial and conviction on four counts of forgery for the purpose of cheating under s 468 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), and two counts of cheating and dishonestly inducing the delivery of property under s 420 of the same Act. The punishment prescribed under both provisions is a mandatory imprisonment term that may extend to 10 years and a fine.

3 I heard the motion on 6 August 2015 and allowed the Prosecution's application for extension of time. I gave brief reasons at that time. In essence, I was satisfied that the matter was broadly covered by the principles I had set out in an earlier judgment, *Lim Hong Kheng v Public Prosecutor* [2006] 3 SLR(R) 358 ("*Lim Hong Kheng*") and applying the analytical framework set out in that case and having regard to the particular circumstances at hand, I concluded that the motion should be granted. It may be noted that unlike *Lim Hong Kheng*, the present motion involved an application brought by the Prosecution and this gave rise to some nuances in the analysis, which makes it appropriate that I treat the point more fully in these detailed grounds.

Background

Facts and circumstances surrounding the commission of the offences

4 I should make it clear that as the appeal is pending, my recitation of the facts is based on what was found by the court below.

5 The respondent was an insurance agent with the American International Assurance Company

Limited ("AIA") at the material time. He devised and carried out a carefully orchestrated, multi-stepped plan to deceive his client and friend of 20 years Mdm Lim Choon Hoong ("Mdm Lim"), an illiterate Mandarin-speaking widow who was aged 61, into unwittingly signing four English language documents, which were the subject matter of the four s 468 charges.

6 Unknown to Mdm Lim, the effect of these documents was:

(a) to cause the surrender of one of her life insurance policies (policy no L530269243) for $2,018.11;

(b) to obtain a loan of $6,500 against another of her life insurance policies (policy no L530269078); and

(c) to authorise the respondent to receive the surrender value of the former and the loan from AIA in respect of the latter, purportedly on behalf of Mdm Lim.

7 Mdm Lim was not well to do. She worked as a factory worker earning a modest sum of between $500 and $600 a month. She had two sons. Her elder son was married with children of his own and was no longer living with her, whereas her younger son was still schooling and remained financially dependent on her.

8 Prior to the commission of these offences, Mdm Lim had loaned the respondent sums of money over many years. These appear to total a sum of approximately $150,000. She thought that the respondent would repay the amount he owed her, but her trust was misplaced. She repeatedly asked the respondent for repayment and even went to his house on at least three occasions for this purpose because she had to pay the university fees for one of her sons. But this was all to no avail. Mdm Lim resolved not to lend the respondent any more money and the respondent then hatched his plan to swindle her of what little she still had.

9 The respondent asked Mdm Lim to meet him at the MacDonald's restaurant in IMM Jurong ostensibly to have breakfast. There, the respondent told Mdm Lim that he was going to leave AIA, and that he needed her to sign some documents to effect a change in her insurance agent. Mdm Lim signed four documents, three of which were official AIA documents, namely, a policy loan form, a request for cash surrender form and a bond of indemnity.

10 Thereafter, the respondent brought Mdm Lim to the DBS Bank branch at the same shopping centre and persuaded Mdm Lim to add him as an "either/or" joint account holder of her POSB bank account. This enabled him to make withdrawals from that account.

11 To achieve this, the respondent told Mdm Lim that he was a police informant and was about to receive a sum of $200,000 for his services. He told her that if his name was added to her POSB bank account, this sum could be deposited by the police into her account and in this way he would repay the amount that he owed Mdm Lim. Mdm Lim believed the respondent.

12 The respondent then drove Mdm Lim home and proceeded on his own to AIA's branch office in Tampines where he committed the s 420 offences. There, he deceived an AIA customer service officer, Ms Linda Lim, into processing the policy surrender and the policy loan, and into handing over to him two AIA cheques for $2,018.11 (being the surrender value of the policy) and $6,500 (being the loan amount).

13 The respondent deposited both cheques into Mdm Lim's bank account of which he was now a

joint holder. He then withdrew the proceeds in cash. The respondent first withdrew $6,500 at a POSB bank branch. He then went to the casino at the Resorts World Sentosa the same evening. After about 19 hours at the casino, he exited and went to a teller machine where he withdrew the remaining $2,000 in cash from the same account before re-entering the casino.

14 The offences came to light after the AIA wrote to Mdm Lim stating that she had surrendered one of her life insurance policies and had taken a loan against another. One of Mdm Lim's sons read the letter from the AIA and conveyed its contents to Mdm Lim.

Punishment meted out by the district judge

15 After a 13-day trial, the district judge convicted the respondent and sentenced him to a total imprisonment term of 9 months on 10 February 2015. I set out the punishment meted out by the district judge in respect of each charge in the following table:

Charge	Brief Facts	Offence	Sentence imposed by the district judge
1st charge (DAC 009185-2013)	Forging an AIA Policy Loan Form that binds Mdm Lim to repay a loan from AIA on her AIA policy no L530269243 for the purpose of using the form to cheat AIA of $6,500.	Section 468 of the Penal Code (forgery for the purposes of cheating)	6 months' imprisonment (consecutive)
2nd charge (DAC 009186-2013)	Forging an AIA Request for Cash Surrender form that purportedly contains Mdm Lim's request to surrender her life insurance policy no L530269078 for its cash surrender value, for the purpose of using the form to cheat AIA of $2,018.11.	Ditto	3 months' imprisonment (concurrent)
3rd charge (DAC 009187-2013)	Forging an AIA Bond of Indemnity in which Mdm Lim purportedly avers that policy no L530269078 cannot be found and agrees to indemnify AIA for payments made without the policy, for the purpose of using the bond to cheat AIA of $2,018.11.	Ditto	3 months' imprisonment (concurrent)
4th charge (DAC 009188-2013)	Forging a Letter of Authorisation in which Mdm Lim purportedly authorises the respondent to collect cheques from AIA on Mdm Lim's behalf for the purpose of using the letter to cheat AIA to deliver the cheques for the sums of $6,500 and $2,018.11.	Ditto	3 months' imprisonment (concurrent)

5th charge (DAC 009189-2013)	Deceiving Linda Lim, the AIA customer service officer, into believing that Mdm Lim had intended to take policy loan from AIA using her AIA policy no L530269243 and by such deception dishonestly inducing the said AIA officer into delivering him a cheque for a sum of $6,500.	Section 420 of the Penal Code (cheating and inducing the delivery of property)	6 months' imprisonment (concurrent)
6th charge (DAC 009190-2013)	Deceiving Linda Lim into believing that Mdm Lim had intended to surrender her life insurance policy no L530269078 in exchange for its cash surrender value, and by such deception dishonestly inducing Linda into delivering to him a cheque for a sum of $2,018.11.	Ditto	3 months' imprisonment (consecutive)

The present criminal motion and the respondent's appeal

16 The respondent filed a Notice of Appeal against his conviction and sentence on 10 February 2015. On 24 February 2015, the Prosecution filed a Notice of Appeal against the sentence imposed, contending that having regard to the aggravating factors in this case, it was manifestly inadequate.

17 The Record of Proceedings and the district judge's grounds of decision were served on the Prosecution on 4 May 2015. Under s 378(1) of the CPC, the Prosecution was required to file its Petition of Appeal within 14 days thereafter, that is by 18 May 2015. Section 378(3) goes on to say that subject to s 380 of the CPC, if the Petition of Appeal is not lodged within time, the appeal will be treated as withdrawn.

18 The Prosecution's Petition of Appeal was not filed by 18 May 2015 due to an administrative lapse on its part. The Prosecution's legal executive thought that a Deputy Public Prosecutor ("DPP") had already been assigned to consider the notes of evidence and the grounds of decision, whereas the DPP who had conduct of the matter thought that the Prosecution had collected only the notes of evidence *and not the grounds of decision* and therefore that time had not yet started to run.

19 The Respondent, on the other hand, proceeded with his appeal against conviction and sentence by filing his Petition of Appeal on time.

20 When the Prosecution came to appreciate its lapse on 5 June 2015, it reviewed the case and concluded that notwithstanding its lapse, this was a case in which an extension of time should be sought to enable its appeal against sentence to be prosecuted. It therefore filed the present motion for an extension of time to lodge its Petition of Appeal on 10 June 2015. By then, there had already been a delay of three and a half weeks after the last date for the petition to be filed.

21 On being informed that the respondent's appeal (Magistrate's Appeal No 23/2015/01) had been fixed for hearing on 19 August 2015, the Prosecution requested an early hearing date for the present criminal motion.

22 On or about 17 June 2015, the respondent indicated his intention to withdraw his appeal. His application to withdraw his appeal was heard by a Judicial Commissioner of the High Court on 26 June

2015 who granted the respondent leave to withdraw his appeal.

23 The respondent sought a short deferment of his sentence to settle his personal affairs, and surrendered himself at the State Courts on 7 July 2015 to begin serving his sentence.

Arguments made in this criminal motion

24 Before me, the learned DPP, Mr Gordon Oh, was candid and acknowledged the lapse on the Prosecution's part in failing to adhere to the relevant timeline for the filing of its Petition of Appeal. But he argued that it would be in the interests of justice to grant an extension of time to enable the Prosecution to file its Petition of Appeal as there was a reasonable prospect of the Prosecution succeeding in the appeal; and also, in his submission, "there are dangers and there are ramifications if a sentence which is patently wrongly in law is left uncorrected because this will remain as a precedent".

25 Mr Oh further emphasised that there was no prejudice caused to the respondent, as the latter was well aware of the Prosecution's motion for an extension of time as well as the possibility that the court might permit the appeal to be prosecuted at the time he withdrew his appeal and then started to serve his sentence. As noted above, the Prosecution's motion was filed on 10 June 2015, more than a fortnight before the respondent withdrew his appeal on 26 June 2015.

26 Mr Oh also assured me that steps had been taken by the Prosecution to ensure that a similar administrative lapse would not recur.

27 The respondent appeared in person. He told me that he had withdrawn his appeal because the Prosecution's appeal had lapsed after its failure to file its Petition of Appeal. But he later said that he decided to go ahead and withdraw his appeal *even though he knew* that the Prosecution had filed the criminal motion for an extension of time to file its Petition of Appeal because he regretted the crimes he had committed.

28 Thus far, our jurisprudence on granting an extension of time to file appeals has concerned applications brought by defendants (see my decision in *Lim Hong Kheng* for a survey of those decisions). To my knowledge, no such motion has previously been brought by the Prosecution and resulted in a reasoned decision.

29 Given the novelty of this aspect of the present application, I appointed a young *amicus curiae*, Ms Liu Zeming, to address me on the question of whether the same considerations that govern applications brought by the defence, as I have laid down in *Lim Hong Kheng*, apply also to a motion brought by the Prosecution. Ms Liu, having considered the relevant precedents, made some broad points on this:

(a) First, she clarified that the *framework* laid down in *Lim Hong Kheng* is derived from the applicable legislation and case law and in general, it should govern all such applications whether brought by the Prosecution or the defence. In this regard, the factors that the court should take into account are those such as:

(i) the length of the delay;

(ii) the reason for the delay; and

(iii) whether there appear to be merits in the appeal.

(b) Second, however, she submitted that the court should be alive to any potential prejudice to the defendant that may be occasioned by the Prosecution's delay. In this regard, she submitted that the court should scrutinise the Prosecution's grounds rather more closely because:

(i) the Public Prosecutor (and his deputies and assistants) are professionals;

(ii) they have at their disposal a vast array of resources;

(iii) the Prosecution does not face the same difficulties that the defence might sometimes face, for instance, in instructing counsel, obtaining legal aid and so on, which might in certain circumstances justify a greater measure of latitude being afforded to defendants; and

(iv) moreover, there might be a danger of unfair prejudice to the defendant in terms of dashed expectations.

30 Ms Liu also addressed me on whether the approach I took in *Lim Hong Kheng* which was to place emphasis on the justice of the *particular case* at hand rather than on wider societal interests continued to apply in light of the later legislative changes to the CPC. I will elaborate on this below.

My decision

Applicable legal principles

31 Sections 378(1) and (3) of the CPC provide that where the Petition of Appeal against any judgment, order or sentence of the trial court is not lodged within 14 days of the service of the record of proceedings and the grounds of decision, the appeal is deemed withdrawn, unless an extension of time is granted under s 380(1). Section 380(1) reads:

Appeal specially allowed in certain cases

380.—(1) The appellate court may, on the application of any person debarred from appealing for non-compliance with any provision of this Code, permit him to appeal against any judgment, sentence or order if it considers it to be in the interests of justice, subject to such terms and conditions as the court thinks fit.

…

32 There are no reported decisions as yet on s 380(1) of the CPC ("s 380(1)"). Both Mr Oh and Ms Liu agreed that *Lim Hong Kheng* is a useful starting point, in as much as it is the leading decision on s 250 of the *previous* edition of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("s 250"), the predecessor to s 380(1).

33 Section 250 reads:

The High Court may, on the application of any person desirous of appealing who is debarred from doing so upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the District Judge or to the Magistrate and to the parties as the Court considers desirable in order that substantial justice may be done in the matter.

34 *Lim Hong Kheng* involved an application by the defence under s 250 for leave to file a Petition of Appeal against conviction out of time. There, I rejected an argument made by the Prosecution's counsel that the wider interests of society at large should be considered in determining whether an extension of time should be granted because I considered that this did not sit well with the plain words of s 250. In particular, what was clear from the section is that the court is to be guided by what would enable substantial justice to be done "in the matter" at hand (*Lim Hong Kheng* at [10]–[12]).

35 The Prosecution in *Lim Hong Kheng* had relied considerably on the following passage from the judgment of Kang Hwee Gee J of the High Court of Malaysia in *Saw Yew Choy v Public Prosecutor* [2000] 1 MLJ 493 ("*Saw Yew Choy*") at 500 to support its contention (*Lim Hong Kheng* at [10]):

> However, the catch phrase 'in order that substantial justice may be done in the matter' … was interpreted in … *Jumari's* case to encompass not merely substantial justice to the convicted person but also substantial justice to 'society at large on whose behalf the Public Prosecutor acts' – following which it was held on the other side of the coin, that no substantial justice would be done, if the appellant's application were to be allowed in that case.

36 I therefore examined the judgment in *Jumari bin Mohamed v Public Prosecutor* [1982] 1 MLJ 282 ("*Jumari*") to determine the context in which that suggestion had apparently been made. This can be gleaned from 284 as follows (*Lim Hong Kheng* at [11]):

> Further, there is nothing on record to show that the applicant's conviction was wrongful. In the circumstances, I am of the view that no substantial justice would be done if the extension of time were allowed in the particular case. For the purpose of doing substantial justice, the court must bear in mind that justice must be done not only to the convicted person but also to society at large on whose behalf the Public Prosecutor acts. As stated by Thomson C.J. in [*Veerasingam v Public Prosecutor* [1958] MLJ 76]… "It is just as imperative that a rightful conviction should be successfully defended as it is that a wrongful one should be successfully attacked".

37 I concluded that when the passage was seen in its context, it became evident that all the court was saying in *Jumari* was that it would also have to consider whether there were any merits in the proposed appeal. I therefore did not accept that it was appropriate to consider the wider interests of society at large where those are not directly relevant to the case at hand (*Lim Hong Kheng* at [12]).

38 In *Lim Hong Kheng*, I also reviewed the cases dealing with the applicable criteria to determine whether an extension of time should be granted in relation to both criminal and civil appeals and concluded that the court should apply an analytical framework that had regard to: (1) the length of the delay in the prosecution of the appeal; (2) the explanation put forward for the delay; and (3) the existence of *some* prospect of success in the appeal in determining whether such an extension should be granted (*Lim Hong Kheng* at [27]). This was subsequently endorsed by the Court of Appeal in *Bachoo Mohan Singh v Public Prosecutor and other applications* [2010] 1 SLR 966 at [64]).

39 I also held that these factors should not be considered and evaluated in a mechanistic way or as though they were necessarily of equal or of any particular importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases (*Lim Hong Kheng* at [37(c)]).

40 The omission of the phrase "in the matter" in s 380(1) might suggest that the court should now take into account the wider interests of society at large in determining whether an extension of time

should be granted contrary to what I had held in *Lim Hong Kheng*.

41 However, Ms Liu pointed out that this omission should not detract from my holding in *Lim Hong Kheng*. She rightly observed that the Parliamentary debates and the explanatory statement on the amendments to the CPC said nothing on the omission of these words and so this could not be taken to suggest a deliberate legislative intent to change the law (*Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at cols 402–462; Explanatory Statement in Criminal Procedure Code Bill (Bill No 11/2010)).

42 I agreed with Ms Liu and held that the touchstone in deciding whether applications under s 380(1) should be granted remains the interests of justice *in the particular case*. As I had noted in *Lim Hong Kheng*, the Malaysian cases that *seemingly* held that broader societal interests might be relevant did not in fact support this; and in any event, they did not offer any guidance to us as to how such interests should be taken into account.

43 At the same time, I did not agree with Mr Oh's submission that the need to *rectify or correct* a precedent should feature in my determination of whether an extension of time should be granted. This was because this particular consideration could easily be addressed if I were to disallow the motion on the basis of the interests of justice in the case before me but nonetheless also make it clear, were I of that view, that the decision below cannot stand as a precedent. Indeed, I could have done this had I come to the conclusion that the defendant in this case would be unfairly prejudiced if I were to allow the motion and also come to a firm view that the sentence imposed was manifestly inadequate.

44 Turning to the question of prejudice, though this is not expressly mentioned in *Lim Hong Kheng* or other cases on applications for extension of time in these circumstances, it inevitably underlies the court's consideration of the issue. Indeed, it bears emphasis that the express words of both s 250 and s 350(1) of the CPC direct the court to the interests of justice. Unfair prejudice to the parties will inevitably and inextricably be linked to the question of what justice requires in a given case and the analytical framework proposed in *Lim Hong Kheng* is ultimately designed to provide a structured framework for addressing this. But the present case was helpful in highlighting a specific aspect of how prejudice might affect this analysis.

45 In my judgment, in applications such as the present, where an extension of time to file an appeal is sought by the Prosecution, there is a heightened need for the court to be alive the risk of potential prejudice occasioned to respondent(s). I set out some examples to illustrate this.

46 In *Director of Public Prosecutions v Coleman* [1998] 1 WLR 1708 ("*Coleman*"), a decision of the English High Court, the defendant was convicted by a magistrate of a road traffic offence but her conviction was quashed on appeal to the Crown Court. Six days after the expiry of the time allowed for appealing, the Crown applied to the Crown Court to state a case for the opinion of the High Court and sought an extension of time to make such an application. A High Court judge who heard the application *ex parte*, granted an extension of time. The defendant objected to this, and applied to pose additional questions, that largely centred on whether the judge ought to have granted the extension of time.

47 Two other judges, Pill LJ and Garland J heard the defendant's application, and held that the judge below should not have done so. Pill LJ, who issued the judgment of the court, said the following at 1715:

> …[E]xtensions of time should not routinely be granted to the prosecution against an acquitted defendant, Indeed, I would expect cogent reasons to be required from the prosecution and that

they should be considered against the background that *an acquitted defendant has some expectation that … the case is at an end*. [emphasis added]

48 The italicised portion of that passage in *Coleman*, in my judgment, reflects the important principle that a criminal defendant, who has been acquitted or been convicted and sentenced has a right not to be kept in *undue* suspense over the possibility of an appeal by the Prosecution once the time for this has run out and where he has an expectation that he will be able to move on with his life (Thomas O'Malley, *Sentencing Law and Practice* (Thomas Round Hall, 2nd Ed, 2006) at p 642 cited in Ireland, Law Reform Commission, *Report on Prosecution Appeals and Pre-Trial Hearings* (LRC 81-2006) (President: The Hon Mrs Catherine McGuinness) at footnote 29 at pp 24–25).

49 Another case illustrating prejudice to a defendant is *The Queen v Baisley Tuimalu Leger* [2001] NZCA 154 ("*Leger*"), a decision of the New Zealand Court of Appeal. The defendant youth offender there was convicted of one count of sexual violence by rape and was sentenced to 2 years' imprisonment, *suspended* for 2 years, during which the defendant was subject to 8 months' periodic detention (which involves an offender reporting to a work centre for at least one day a week for up to 10 hours), 7 months' supervision and a fine. The Crown did not object to this sentence at the court below but 35 days after the time for appeal had expired, the Solicitor-General sought an extension of time to appeal against the sentence on the ground that it was manifestly inadequate and sought a sentence of more than 2 years' imprisonment. Under New Zealand law, a sentence of that duration could not be suspended.

50 While the court in *Leger* accepted that there were merits in the appeal, it nonetheless declined the Crown's application because:

(a) the defendant had already commenced his sentence of periodic detention before the Crown applied – the work centre and the defendant were not advised of the appeal, and as a result, the defendant continued to attend and had already completed half that sentence (*Leger* at [13]); and

(b) the Crown did not object to the sentence imposed at the court below and the defendant therefore had "very good reason to believe, when the appeal period expired, that he was no longer in peril of imprisonment" (*Leger* at [31]).

51 These cases illustrate the potential danger of prejudice that could be occasioned to defendants. They reinforce the importance of and the need for the Prosecution to act expeditiously in filing appeals. It is in this context that I find myself in broad agreement with Ms Liu's submission, summarised at [29(b)] above, that applications by the Prosecution for extensions of time must be especially carefully scrutinised.

52 A similar point was made by Lord Bingham of Cornhill in the decision of the House of Lords in *Regina v Weir* [2001] 1 WLR 421. The defendant in that case was convicted of murder, burglary and assault occasioning actual bodily harm. His appeal to the English Court of Appeal was allowed on the ground that the principal evidence on which he was convicted was a DNA profile that the court below found to be inadmissible. The Court of Appeal certified a point of law of general public importance but refused leave to appeal to the House of Lords. The Crown applied for leave to appeal, but its application was one day out of time beyond the statutory limit of 14 days allowed to prosecutors. The Crown petitioned to the House of Lords for an extension of time and leave to appeal. The House of Lords refused the extension of time and leave to appeal because Section 34 of UK's Criminal Appeal Act 1968 (c 19) permitted the grant of an extension of time in favour of the defendants but not the Crown. On this distinction made by statute, Lord Bingham held at 426:

> It is not hard to infer why Parliament should have drawn a sharp distinction between the position of a defendant and that of a prosecutor. A defendant … may well be in prison and experience difficulty in giving instructions, obtaining legal aid and perhaps instructing different solicitors for an appeal …. A measure of latitude is therefore allowed to him. But none of these problems would prevent a professional prosecutor who had already appeared at the trial and in the Court of Appeal making application to the House of Lords within the [prescribed period]. …

Exercise of the discretion in this case

53 I applied these principles to the present case.

54 The delay of three and a half weeks on the part of the Prosecution in filing its criminal motion was not short, but it cannot be said to be inordinate. I was also satisfied that the Prosecution had taken immediate steps on discovering its mistake to pursue its appeal and to avoid any further delay.

55 The problem had arisen due to an administrative lapse and although this was not to be condoned, it had to be balanced against the public interest in pursuing an appeal.

56 Mr Oh in his written submissions argued that there are several aggravating factors, such as the presence of deliberate planning and premeditation on the part of the respondent, and a serious degree of abuse of trust; he further relied on a number of sentencing precedents to persuade me that the sentence imposed by the district judge was manifestly inadequate.

57 This was not the occasion for me to come to a view on whether or not the sentence was manifestly inadequate. That should, and indeed was left to another judge who will make a determination as to whether the appeal should be allowed. I therefore confine myself to saying that I was satisfied from the arguments Mr Oh placed before me in his written submissions that the appeal was not without some prospect of success.

58 Lastly, I was satisfied that there was no prejudice occasioned to the respondent in the particular circumstances of this case. I was concerned initially that he might have been prejudiced in having withdrawn his appeal after the Prosecution's appeal had lapsed because of its failure to file its Petition of Appeal timeously. But the Prosecution filed its motion at a time when the respondent's appeal was still pending. At that stage, there was nothing to indicate that the respondent wished to close this chapter and move on with his life. His first intimation of an intention to withdraw his appeal was a week or so after the motion was filed. By the time he did withdraw the appeal on 26 June, he was certainly aware of the motion. Hence, this was a different situation than was presented to the New Zealand Court of Appeal in *Leger* and the English Court of Appeal in *Coleman*.

59 Moreover at the hearing before me, the respondent informed me that he proceeded to withdraw his appeal *even though he knew* that the Prosecution had filed the motion to extend time to file its Petition of Appeal because he regretted what he had done. I set out the relevant portion of the transcript, which reads:

> Respondent: The decision to, er, forego my appeal was made upon receiving the letter from State Court that the prosecution has not been able to file the appeal. … Even though upon receiving that, er, the [Prosecution's] criminal motion, because, er, as I'm truly regretted, we have decided to go ahead to withdraw our appeal. …

60 In the unusual circumstances of this case where the respondent himself had appealed the decision below and the motion was brought during the pendency of that appeal, and having regard to

the other factors I have set out above, I was satisfied there would be no unfair or undue prejudice to the respondent if I allowed the motion.

Conclusion

61 For these reasons, I allowed the Prosecution's motion and granted an extension of time to file its Petition of Appeal.

62 I am very grateful for the assistance afforded by Ms Liu who presented me with detailed, thorough and careful submissions.