Teo Kok Leong Kevin (alias Muhammad Ridwan Teo) *v* Public Prosecutor [2010] SGHC 281

Case Number	: Magistrate's Appeal No 301 of 2010 (DAC No 37972 of 2010 and MAC Nos 3539-3540 of 2010)
Decision Date	: 20 September 2010
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Appellant in-person; Tan Kiat Pheng (Attorney-General's Chambers) for the respondent.
Parties	: Teo Kok Leong Kevin (alias Muhammad Ridwan Teo) — Public Prosecutor

Criminal Procedure and Sentencing

20 September 2010

Choo Han Teck J:

1 The appellant was a 32-year old Muslim convert who admitted to using a male toilet at the Bethesda Church Bukit Arang (the "Church") on 20 May 2010. After being apprehended by the Church staff, he was told that if he wanted to visit the Church, he ought to first register for a "visitor pass". However, on 27 May 2010 he went to the Church again and had a shower using the soap and shampoo there. The statement of facts merely stated that he was found to have used the soap and shampoo after he left "the cubicle". He was not charged with theft. The senior pastor of the Church then apprehended the appellant and confiscated the Muslim Conversion card the appellant used to identify himself. The appellant was then escorted out of the Church premises. On 29 May 2010, the senior pastor lodged a complaint against the appellant. On 18 June 2010 the appellant lodged a police report claiming that he had lost his Muslim conversion card although he knew that it was not lost but was confiscated by the senior pastor.

2 Arising from the facts admitted, he was charged with two charges of committing house-trespass, punishable under s 448 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and one charge of giving false information to a public servant, an offence punishable under s 182 of the Penal Code. He was sentenced to two weeks imprisonment for the s 182 charge and eight weeks imprisonment for each of the s 448 charges. The two s 448 sentences were ordered to run concurrently but consecutively to the sentence under the s 182 charge, making a total of ten weeks imprisonment. Another s 448 charge and one charge of loitering with intent to commit an offence under s 27(2) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) were taken into consideration.

3 The judge at first instance described the conduct of the appellant as an "egregious behaviour" that "far outweighed" the mitigation of pleading guilty. The judge also took into account a previous conviction of criminal trespass in 2009 where he was sentenced to two weeks imprisonment (one further charge of criminal trespass was taken into consideration). Nothing was stated in the grounds as to the facts concerning those previous convictions. On the record, the appellant was also convicted of theft in 2006, for which he was imprisoned for 101 days. While the judge acknowledged the latter conviction, that did not form part of his reasons in the sentencing for the current offences.

4 Previous convictions are relevant and courts are generally inclined to impose a higher sentence for subsequent convictions. The question is how much higher should the sentence be were the court to accept the relevance of the previous conviction? In cases of this nature, that is to say, petty theft and criminal trespass, the court should note that though they were related offences in that a person might have stolen after committing house trespass or alternatively, a person could have committed house trespass in order to commit theft, the two offences might also have been un-related. The present offences of house trespass did not appear, from the record, to have involved any intention to commit theft. For an offence of house trespass, the nature of the trespass and the property are relevant factors. How the trespass was effected, at what time and the duration of the trespass must also be taken into account; and so too, the motive and intention of the trespasser.

5 Where the trespass did not involve any threat or alarm to persons the sentence need not include imprisonment. In the present case, I was of the view that the nature and circumstances of the trespass would not have merited a custodial sentence had the appellant not had a previous conviction. The property in question was not a private home, and there was no evidence that the trespass had caused any mischief or trouble. In both instances, it seemed to me that the appellant was apprehended and admonished for using the Church's male toilet. In these circumstances, there was nothing overtly sinister in his actions. There was also no indication of forcible entry. In the statement of facts, it was said that the appellant may have entered and left the Church premises through the back door at the second level of the Church. Furthermore, it was on record that he would have been permitted entry had he asked for a "visitor pass" which, I suppose, the church might not uncharitably refuse if the appellant merely needed a place to wash himself, which was what he did in this case. I was therefore of the view that the total sentence should be reduced from ten weeks imprisonment to six weeks so that the appellant who was already serving sentence could be released forthwith.