IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 40

Magistrate's Appeals No 9093 of 2016/01 and 02

Between

Zhou Haiming

… *Appellant/Respondent*

And

Public Prosecutor

… *Respondent/Appellant*

Magistrate's Appeals No 9094 of 2016/01 and 02

Between

Luo Jianguo

… *Appellant/Respondent*

And

Public Prosecutor

… *Respondent/Appellant*

GROUNDS OF DECISION

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Introduction

1 These were two sets of cross-appeals involving two People's Republic of China nationals, Zhou Haiming ("Zhou") and Luo Jianguo ("Luo"), who had engaged in a conspiracy to commit theft in the two casinos in Singapore. The two, together with another conspirator, Huang Xiaomei ("Huang"), stole casino chips worth a total of S$100,225 from more than 60 victims on 284 occasions at the casinos and attempted to steal another S$7,925 worth of casino chips on 13 other occasions.

2 Subsequently, Zhou and Luo left Singapore to return to China and brought various sums of money (S$1,000 and RMB6,800 in the case of Zhou and RMB4,500 for Luo) along with them. They were arrested slightly less than two weeks later when they returned to Singapore with the intention to

commit further thefts in one of the casinos. The two were charged with the offences of engaging in a criminal conspiracy to commit theft under s 379 read with s 120B of the Penal Code (Cap 224, 2008 Rev Ed) and removing proceeds of criminal activity from the jurisdiction under s 47(1)(*b*), and punishable under s 47(6)(*a*), of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA"). I will refer to these charges as "the criminal conspiracy charge" and "the CDSA charge" respectively. The Prosecution proceeded on both charges against each offender.

3 The District Judge sentenced the offenders to an imprisonment term of 18 months each for the criminal conspiracy charge and an imprisonment term of two weeks each for the CDSA charge, with the two terms to run concurrently. Zhou and Luo were thus ordered to serve a total term of imprisonment of 18 months each. The Prosecution and the offenders appealed against the decision of the District Judge in the two sets of cross-appeals before me.

4 After hearing the submissions of both counsel for the offenders and the Prosecution, I enhanced the sentences of both offenders in relation to the criminal conspiracy charge to 24 months' imprisonment but declined to run the sentences for the criminal conspiracy charge and the CDSA charge consecutively.

Background facts

5 According to the Statement of Facts ("the SOF"), Zhou and Luo, who were 41 and 37 years old respectively, were from the Jiangxi province in China. The two were acquainted from the time they were in China. Sometime

in 2015, the two had plans to come to Singapore. When a mutual acquaintance, "Xiao Fu", found out about this, he told them that he had a friend called "Xiaomei" in Singapore who earned a lot of money at the casino. "Xiao Fu" asked Zhou and Luo if they were interested in making some money. They expressed interest and were given the contact details of "Xiaomei", who turned out to be Huang, on "WeChat", an Internet messaging service. Huang subsequently established contact with Luo through "WeChat".

6 On 18 September 2015, Zhou and Luo arrived in Singapore on social visit passes. Three days later, on 21 September 2015, they met Huang at the casino at Marina Bay Sands ("the MBS Casino"). Huang told them that they could make money by stealing casino chips from the patrons of the casino and using the stolen chips to gamble. Zhou and Luo agreed to do so.

7 Thereafter, Zhou and Luo followed Huang to her rented accommodation, where she taught them how to steal casino chips by picking up chips from gaming tables using strips of double-sided sticky tape that were stuck on the inside of their palms. The plan was that they would target patrons who placed large bets using a stack of chips so as to minimise their chances of being found out. They would then work together, with one of them passing his or her palm over the stack of casino chips at the gaming table to steal the chips, and the others distracting the dealer and the patron. The agreement was that at the end of each day, they would give Huang a fifth of the value of the casino chips that they stole and divide the remainder.

8 Pursuant to this conspiracy, Zhou, Luo and Huang stole casino chips worth a total of S$100,225 from more than 60 patrons on 284 occasions between 21 September and 12 October 2015. Out of the 284 acts of theft, 264 acts were committed in the MBS Casino and 20 acts were committed in the

casino at Resorts World Sentosa ("the RWS Casino").[1] They made 13 further attempts to steal casino chips worth a total of $7,925 in the MBS Casino but did not succeed.

9 On 13 October 2015, Zhou and Luo left Singapore to return to China. Luo brought RMB4,500 (equivalent to about S$912.64) and Zhou brought S$1,000 and RMB6,800 (equivalent to about S$1,379.11) on this return trip. These were a small part of the proceeds from their criminal conspiracy, and were the subject of the CDSA charges against them. They had spent the remaining money on gambling and other personal expenses.[2]

10 Eleven days later, on 24 October 2015, Zhou and Luo returned to Singapore intending to steal more casino chips using the same *modus operandi*. At 2.20pm on that day, they attempted to enter the MBS Casino but were stopped and arrested as they had been marked as "persons of interest" by the casino. Several pieces of double-sided tape were in their possession. Luo was also carrying RMB2,400 (equivalent to about S$486.74) while Zhou was carrying S$1,000 and RMB2,040 (equivalent to about $413.73). They admitted that these were from the proceeds of their earlier acts of theft. Zhou and Luo were thereafter arrested by the police and were charged with the criminal conspiracy charges and the CDSA charges. Neither of them made any restitution. Huang left Singapore and remained at large at the time of the appeals.

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1 [15] of the District Judge's Grounds of Decision ("GD").

2 Record of Proceedings ("ROP") of MA 9093/2016 at p 95, para 12.

The proceedings before the District Judge

11 On 5 May 2016, Zhou and Luo pleaded guilty to the two charges that they each faced.

The sentencing submissions of the parties

12 The Prosecution sought the following:

(a) an imprisonment term of between two years and two and a half years for the criminal conspiracy charge;

(b) an imprisonment term of two to four weeks for the CDSA charge; and

(c) the sentences for the criminal conspiracy charge and the CDSA charge to run consecutively.

13 The Prosecution submitted that a sentence "near the highest end of the sentencing range" of the offence of theft *simpliciter* was warranted in respect of the criminal conspiracy charges in the light of the severity of the criminal conspiracy. It submitted that such a sentence was necessary in order to achieve both general and specific deterrence. In particular, the Prosecution highlighted that the case was unprecedented in terms of the amount involved, the number of victims and the duration of the criminal enterprise. It also submitted that Zhou and Luo were foreigners who came to Singapore to participate in a sophisticated criminal enterprise, and were only caught because they returned to Singapore to perpetuate the offences. The Prosecution emphasised that this reflected that the offenders were not at all remorseful for their actions.

14 The Prosecution urged the District Judge to take into account the fact that although it had proceeded only on a single charge of criminal conspiracy to commit theft for each offender, 297 acts of theft or attempted theft had in fact been committed as a result of their conspiracy.[3] The Prosecution submitted that the sentence imposed for the criminal conspiracy charge should thus not be lower than the global sentence that would have been imposed had 297 charges of theft or attempted theft been brought.

15 As for the CDSA charges, the Prosecution submitted that a term of imprisonment of between two and four weeks would be in line with the precedents for the offence. It submitted that the sentences for the criminal conspiracy charges and the CDSA charges should be made to run consecutively for each offender as the two offences were conceptually distinct and protected different interests. The Prosecution argued that the criminal conspiracy charges related to the means by which the offenders acquired their criminal proceeds, while the CDSA charges related to them bringing the criminal proceeds out of jurisdiction.

16 Counsel for the offenders agreed that the CDSA charges ought to attract a sentence of between two and four weeks' imprisonment but did not agree that the criminal conspiracy charges merited that high a punishment or that the two sentences should be made to run consecutively. Instead, they submitted that the criminal conspiracy charges should only attract an imprisonment term of between six and nine months and that the two sentences ought to run concurrently as both offences formed part of the same transaction.

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3 ROP for MA 9093/2016 at p 715, para 40.

17 In particular, counsel for Luo, Mr Justin Tan ("Mr Tan"), submitted that a sentence of two to two and a half years' imprisonment for the criminal conspiracy charge would be manifestly excessive because of the following three reasons:

(a) Such a high sentence was unsupported by precedents. Instead, a sentence of six to nine months' imprisonment would be consistent with the sentences meted out in precedents such as *Zuniga Holina Raul Eduardo v Public Prosecutor* (Magistrate's Appeal No 254 of 1996, unreported) ("*Zuniga*") and *Public Prosecutor v Gary Wu Yuei Chung* ("*Gary Wu*") (Magistrate's Appeal No 287 of 1995, unreported).[4]

(b) While deterrence was the dominant sentencing consideration, this had to be tempered by proportionality and parity.[5] A sentence near the upper end of the sentencing range should be reserved for only the worst cases within that prohibition and the offences committed by the offenders were not of that severity. Mr Tan highlighted that the offences committed by Zhou and Luo were not much more serious, sophisticated or egregious than those committed by the offenders in *Zuniga* and *Gary Wu*, who were both sentenced to six months' imprisonment.[6]

(c) Luo's role in the entire transaction had to be taken into account for the purposes of sentencing. In this regard, Mr Tan submitted that Luo had played only a minor role in the conspiracy and was "akin to a foot soldier", who had "learned everything from the mastermind, Huang".[7] He further submitted that the bulk of the casino

4 ROP of MA 9094/2016 from p 622 onwards.

5 ROP of MA 9094/2016 at p 626.

6 ROP of MA 9094/2016 at p 627, para 40.

chips had been stolen by Huang, whose culpability ought thus to be far higher.

18 The submissions put forward by counsel for Zhou, Ms Chong Yi Mei ("Ms Chong"), were largely similar. Ms Chong acknowledged, however, that the criminal conduct in this case involved an additional aggravating factor that was absent in *Zuniga* and *Gary Wu*. This was the fact that this case involved far more victims and items. She accepted that a sentence in the range of six to nine months' imprisonment (which was still lower than that submitted by the Prosecution) should be meted out.[8] Ms Chong further submitted in Zhou's mitigation that he had committed the offences out of desperation, because he was in debt after borrowing money to pay the hospital fees that were incurred by him as well as his father who had since passed away.[9]

The decision of the District Judge

19 The District Judge sentenced Zhou and Luo to 18 months' imprisonment for the criminal conspiracy charge and two weeks' imprisonment for the CDSA charge that they respectively faced, with the sentences to run concurrently. His decision is reported as *Public Prosecutor v Luo Jianguo & Zhou Haiming* [2016] SGDC 126.

20 The District Judge held that general deterrence was the predominant sentencing consideration in the case. He further held that specific deterrence was applicable given that the offences were premeditated and involved a

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7 ROP of MA 9094/2016 at p 629, para 44.

8 ROP of MA 9093/2016 at p 916, para 24.

9 ROP of MA 9093/2016 at p 913, para 10.

degree of planning, and that the offenders had in fact returned to Singapore with the intention to commit further thefts.

21 The District Judge did not find the precedents tendered by the Prosecution or counsel to be particularly helpful. He noted that the precedents tendered by the Prosecution involved amounts which were significantly lesser and were lacking in details.[10] As for the three cases cited by the defence (*Zuniga*, *Gary Wu* and *Chia Khee Har v Public Prosecutor* (Magistrate's Appeal No 238 of 1993, unreported) ("*Chia Khee Har*")), the District Judge observed that no clear relationship could be discerned between the sentences imposed and the value of the stolen items or the loss to the victims. He concluded that neither of these factors was the sole, or even possibly the main, determinant of the sentence that should be imposed, and that all that could be gathered from the cases was that where items valued at more than $100,000 were stolen, sentences ranging from six months' imprisonment to two years' imprisonment had been imposed.[11]

22 The District Judge was of the view that the following factors were aggravating in nature:

(a) the nature and extent of the acts of theft and attempted theft, the number of victims who were affected and the duration of the conspiracy;

(b) the amount involved and the lack of restitution;

(c) the pre-meditation and organisation involved in the operation; and

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10 At [55] of the GD.

11 At [74] and [75] of the GD.

(d) the fact that the offenders had returned to Singapore with the intention to commit further offences using the same *modus operandi*.

He observed, however, that there were also factors that were mitigating in nature:

(a) the offenders' pleas of guilt and the remorse that they demonstrated; and

(b) the lesser roles played by the offenders in the criminal conspiracy.

23 Taking all the factors as well as the precedents cited by the Defence into consideration, the District Judge sentenced the offenders to a term of 18 months' imprisonment for the criminal conspiracy charges. He was of the view that the sentence imposed ought to be considerably higher than the imprisonment term of six months imposed in *Zuniga* and *Gary Wu* but not as high as that imposed in *Chia Khee Har* (*ie*, two years' imprisonment).

24 The District Judge imposed a sentence of two weeks' imprisonment for the CDSA charges. This decision was not the subject of any of the appeals before me. He declined to run the sentence for the CDSA charge consecutively with that of the criminal conspiracy charge because he was of the view that this accorded with common sense and, further, there was clear proximity of purpose and unity of protected interests between the two offences in the context of the present case.

The arguments on appeal

25 The Prosecution argued that the District Judge was wrong (a) to have imposed only a term of 18 months' imprisonment instead of two to two and a

half years' imprisonment for the criminal conspiracy charge; and (b) to have ordered the two sentences to run concurrently rather than consecutively. The Prosecution's appeals were premised on four main grounds:[12]

(a) the District Judge had erred in finding that there was no transnational element in the conspiracy;

(b) the District Judge had erred in finding that "the [o]ffenders and their associates" did not target Singapore;

(c) the District Judge had erred in finding that the present case was not one of the worst cases that fell within the offence of simple theft and thus imposed a sentence that was manifestly inadequate;

(d) the District Judge had erred in giving undue weight to the offenders' pleas of guilt and supposed remorse; and

(e) the District Judge had erred in finding that there was a unity of protected interests between the criminal conspiracy charge and the CDSA charge.

The Prosecution also emphasised that the importance of deterring criminal activities in the casinos could not be overstated and that the public interest called for such deterrence and a strong stance against crimes in the casinos.[13]

26 Both offenders filed cross-appeals against the District Judge's decision. Their appeals pertained only to the sentence for the criminal conspiracy charge, which they argued was manifestly excessive.

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12 Prosecution's written submissions dated 5 August 2016 ("Prosecution's submissions") at para 20.

13 Prosecution's submissions at para 43.

27 Mr Tan submitted on behalf of Luo that the sentence of 18 months' imprisonment was disproportionate and manifestly excessive in the light of the precedents.[14] He also argued that the Judge was wrong to have found that there was no direct co-relation between the loss suffered by the victims and the sentence that was ultimately imposed in each case. Relying on my observations in *Lim Ying Ying Luciana v Public Prosecutor and another appeal* [2016] 4 SLR 1220, Mr Tan submitted that there must be a direct relationship between the amount stolen and the sentence imposed. He argued that had the District Judge properly considered the sentence in the light of the total amount that had been stolen, it would have been apparent that the sentence imposed on Luo should have been lower than, or at the most in the range of, that imposed in *Zuniga* and *Gary Wu* (*ie*, six months' imprisonment), which involved far greater amounts.[15] He further submitted that even if the amount stolen were to be put aside, the sentences imposed in the three cases would still be relevant and should be followed given that those cases involved the same aggravating factors as the present case.

28 Ms Chong submitted on behalf of Zhou that none of the aggravating factors listed by the District Judge warranted the imposition of a sentence that was three times more severe than that imposed in precedents such as *Zuniga*. While conceding that there were aggravating factors in the present case that were absent in the precedents such as *Zuniga*, Ms Chong argued that Zhou's conduct could also be regarded as less culpable than that of the offenders in *Zuniga* and *Chia Khee Har* as (a) Huang, and not Zhou, was the mastermind; and (b) the offender in *Zuniga* faced additional cheating charges while Zhou did not. She submitted that taking all the factors into consideration, a sentence

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14 Luo's written submissions dated 8 August 2016 ("Luo's submissions") at para 5.

15 Luo's submissions at para 24.

of nine months' imprisonment—this being three months more than what was imposed in *Zuniga*—would have sufficiently taken into account Zhou's culpability while being consistent with the precedents.

My decision

29 All the appeals ultimately involved the question whether the District Judge was correct in his sentencing decisions in respect of the offenders, and the reasoning and factors in respect of both offenders are largely similar. I will address the arguments raised in the appeals collectively, as I did when delivering my brief oral remarks on 26 August 2016.

Whether the case involved a transnational element

30 The Prosecution submitted that one reason why the District Judge had imposed a manifestly inadequate sentence for the criminal conspiracy charge was because he had "gravely mischaracterised" the nature of this case in finding that there was no transnational element in the criminal conspiracy offence.[16] It argued that the District Judge was wrong to have concluded that that there was no transnational element simply because the offenders were only aware of the conspiracy after they met Huang in Singapore and because the acts of theft took place only in Singapore. The Prosecution submitted that the crucial point was instead that the offenders had agreed to participate in a criminal activity that did not *only* involve persons in Singapore, in that they must have known after they were briefed by Huang that they were dealing with a "cross-border criminal enterprise" as Xiao Fu had contacted them in China.[17] It further submitted that this was clearly not a "locally organised criminal enterprise" given that there were no Singaporean involved in the

16 Prosecution's submissions at para 23.

17 Prosecution's submissions at para 26.

conspiracy;[18] instead, the offences involved a transnational element as the offenders were recruited in China even though their conspiracy with Huang was only formed after they met her in Singapore.[19]

31 Mr Tan and Ms Chong argued, on the other hand, that the District Judge was correct to have found that there was no transnational element because it was clear from the SOF that the offenders had known about the plan from Huang only after they arrived in Singapore. Counsel emphasised that there was no suggestion from the SOF that the offenders knew from the outset while they were in China that they would be coming to Singapore to commit theft.

32 In my view, in the context of this case, the more pertinent question and the focus of the enquiry should not be whether there was a transnational element but whether the offenders, who were foreigners, had targeted Singapore for criminal activities. In this regard, I agreed with the District Judge that there was no evidence that showed that the offenders had known about the conspiracy or contemplated any illegal conduct before they arrived in Singapore. In fact, the SOF (in particular paragraphs 5 and 6) reflected otherwise. Given that there was at least some doubt in relation to this point, the District Judge was correct to have resolved the ambiguity in favour of the offenders. But the fact remained that after their arrival in Singapore, the offenders chose to engage in the conspiracy with Huang for three weeks. It did not appear that they chose to stay in Singapore throughout that duration for any *bona fide* purpose other than to commit the acts of theft in the casinos. To put it simply, their continued presence in Singapore was to perpetrate the thefts, from which they obtained substantial gains. From that point in time

[18] Prosecution's submissions at para 26.

[19] Prosecution's submissions at para 29.

when they agreed to help Huang, the offenders became part of the conspiracy, which involved Huang and Xiao Fu scouting for people in China who were heading to Singapore. To that extent, I agreed with the Prosecution that the offences had a transnational element.

33 Seen in the full light of the factual context, while I accepted that there was no evidence showing that the offenders had targeted Singapore to commit offences *before* they left China, they had certainly targeted Singapore and the casinos from the time they knew about the conspiracy and for the duration that they remained here and carried out the conspiracy. It was also telling that the offenders had *returned* to Singapore barely ten days after departing to commit further offences using the same *modus operandi*. While this was not the subject of any of the charges, the fact that they had made a second trip to Singapore to carry out a further round of criminal activities was indicative of their motives and intention.

34 I therefore agreed with the Prosecution that the District Judge had erred in not according due weight to the transnational element in the offences and, more importantly, the fact that the offenders had targeted Singapore in committing the offences. These factors would have enhanced the need for general deterrence and warranted the imposition of a higher sentence for the criminal conspiracy charges (see the observations of the High Court in *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 at [67] and *Fricker Oliver v Public Prosecutor and another appeal and another matter* [2011] 1 SLR 84 at [2]).

Whether the public interest demands deterrent sentences for all criminal activities in the casinos

35 I turn next to address another argument raised by the Prosecution – that a higher sentence was warranted because the public interest necessitated the deterrence of criminal activities in the casinos in Singapore.[20] The Prosecution took the position that the importance of deterring criminal activities in the casinos in Singapore could not be over-stated.

36 In support of this submission, the Prosecution cited the 2009 report of the Financial Action Task Force on *Vulnerabilities of Casinos and Gaming Sector* and excerpts from the parliamentary debates on the Casino Control (Amendment) Bill 2012 as well as two unreported District Court cases, namely, (a) my decision in *Public Prosecutor v Kipuyo Lemburis Israel* (DAC 22231 of 2010 and others, unreported) ("*Kipuyo*"); and (b) the decision of Chief District Judge ("CDJ") Tan Siong Thye (as he then was) in *Public Prosecutor v Loo Siew Wan* (DAC 8360 of 2010 and others, unreported) ("*Loo Siew Wan*").

37 While I agreed that *on the facts of this case*, the offenders' conduct called for a deterrent sentence, I did not agree with the broad and sweeping submission by the Prosecution that the public interest demanded deterrent sentences for (all) criminal activities in the casinos. In my view, the sentencing approach had to be more nuanced. It was not appropriate to suggest that *all* manner of criminal activity warranted deterrent sentences as long as, and just because, it was committed in a casino.

38 These observations had, in fact, already been observed in *Kipuyo* and *Loo Siew Wan*. In *Kipuyo*, which involved an offence of cheating that took

[20] Prosecution's submissions at para 43.

place in a casino, I aligned my views with those of CDJ Tan in *Loo Siew Wan*, and made the following observations:

> 7 … It would also not be entirely accurate to say that all casino cheats must be handed deterrent sentences regardless of the nature or gravity of their offences. *The courts' sentencing approach has to be carefully calibrated to ensure that the sentence is appropriate to the individual circumstances of each case.*
>
> 8 In [*Loo Siew Wan*], the Chief District Judge opined as follows in his oral judgment:
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> > 10 The court will impose tough deterrent sentences against organi[s]ed or syndicated crime, illegal money lending, using counterfeit casino chips, money laundering, and large-scale criminal activities that are often associated with casino. This tough approach will also be taken against foreign syndicates, gang or groups who seek to infiltrate and perpetuate their vices in our casinos. This tough approach is necessary in order to curb crime and ensure that we continue to have safety and security.
> >
> > 11 However, this same approach should not be applied across the board, and against all casino-related crimes. In a situation where it does not involve organi[s]ed or syndicated crime that has no effect on law and order issues, then the court should calibrate the sentence carefully according to the facts and merit of each case. There should not be a one size fits all [approach] in sentencing as this may lead to injustice. The sentence must fit the crime and the offender.
>
> 9 I concur fully with these observations. There may be good reasons why general deterrence for certain cheating offences can be a weighty consideration in sentencing. *Nevertheless, the mere fact that cheating takes place in casino does not ipso facto warrant a deterrent sentence, without more.*
>
> [emphasis added]

It cannot be gainsaid that the nature and gravity of the offending conduct and the offender's culpability must always be carefully considered in calibrating the appropriate sentence. In the light of the elements of organisation, planning and premeditation as well as the duration of the offences in the present case, I

agreed that the Prosecution's call for a deterrent sentence was justified in this case. It must, however, be made clear that there is no *carte blanche* rule that casinos deserve special protection from criminal activities through the imposition of deterrent sentences across the board for any and all forms of crimes committed in, or related to, casinos.

The appropriate sentence for the criminal conspiracy charge

39 Having considered the factors in this case, I was of the view that the sentence of 18 months' imprisonment imposed by the District Judge for the criminal conspiracy charge was manifestly inadequate. There were several significant aggravating factors. The offences were not only planned and premeditated, but were numerous and repeated and had spanned three weeks. A substantial sum of $100,225 was stolen in total from more than 60 victims over 284 occasions. It was even more aggravating that the offenders had brazenly returned to Singapore less than two weeks later in order to commit further offences in the casinos. General and specific deterrence were clearly warranted. I also agreed with the Prosecution that it must be borne in mind that while only a single charge of criminal conspiracy to commit theft was brought, the offenders had in fact committed and attempted to commit nearly 300 acts of theft in total. This, together with the other aggravating factors, clearly placed this case at the higher end of the sentencing range for the offence of theft *simpliciter*.

40 On the contrary, there were no significant mitigating factors other than the fact that the offenders had pleaded guilty. Yet, even their pleas of guilt must be considered in the light of the fact that they were caught red-handed when they tried to enter the MBS Casino with pieces of tape and that there was surveillance footage that captured each and every one of their acts of theft

in the two casinos. In these circumstances, I could not agree with the District Judge that their pleas of guilt were a "highly significant mitigating factor". With respect, the District Judge had accorded undue weight to their pleas of guilt in his calibration of the sentences.

41 I should also add that I did not see any merit in the submission of the offenders that their sentences ought to be reduced as their culpability was lower than that of Huang, who was the mastermind. Taken at its highest, this argument led only to the conclusion that the sentence that ought to be imposed on Huang—if and when she was arrested—had to be *higher* than that imposed on the offenders because of the principle of parity. It did not follow from this argument that the sentences imposed on the offenders ought to be lower than those meted out by the District Judge or those submitted by the Prosecution. This was especially so given that both sets of sentences were lower than the maximum imprisonment term of three years for the offence of theft *simpliciter*.

42 I also did not find the precedents raised by Mr Tan and Ms Chong, namely, *Zuniga*, *Gary Wu* or *Chia Khee Har*, to be relevant or helpful. No grounds were delivered for any of the decisions. As reiterated by Sundaresh Menon CJ in the recent case of *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 (at [13(b)]), sentencing precedents without grounds or explanations should bear little, if any, weight because they are unreasoned, making it difficult if not impossible to discern what had weighed on the mind of the sentencing judge in coming to a certain decision.

43 Further, each of these decisions was also easily distinguished from the present case. For one, these cases involved far fewer numbers of thefts (two acts of theft with five other charges of cheating taken into consideration in

Zuniga, two acts of theft with two other charges of theft taken into consideration in *Gary Wu*, and a single act of theft and a related customs charge in *Chia Khee Har*). In contrast, the present case involved a conspiracy that resulted in nearly 300 acts of theft. A brief summary of the facts of each of the cases would be sufficient to show that they were very different from the present case. The offender in *Zuniga* had stolen clutch bags together with several accomplices. While the contents of the bag in one of the charges included gemstones worth S$251,275.50, it was not clear on the facts whether the offender and her accomplices knew of the existence of the gemstones *before* they stole the bag. The offender in *Gary Wu* had stolen paintings and a vase worth S$595,000 and S$50,000 respectively from his mother, and the items were all recovered. His mother, who was the victim, had pleaded for him to be given a lighter sentence. As for *Chia Khee Har*, the offender had stolen 1,860 cartons of brandy valued at S$781,200 together with three accomplices, by removing the cartons from a wharf, and thereafter sold the brandy to a third party. In the light of the very different factual matrices and the absence of grounds for the decisions, I did not find these precedents relevant or helpful.

44 For the above reasons, and in particular in the light of the significant aggravating factors and paucity of mitigating factors, I agreed with the Prosecution that the sentence of 18 months' imprisonment that was meted out by the District Judge was manifestly inadequate. A deterrent sentence of 24 months' imprisonment, which would be at the higher end of the sentencing range for the offence of theft *simpliciter*, was warranted.

Whether the two sentences should run consecutively

45 I agree that in many instances, an offence under the CDSA would form a separate and distinct act of criminality from its predicate offence, be it theft

as in this case or otherwise. For instance, in *Lim Seng Soon v Public Prosecutor* [2015] 1 SLR 1195, the High Court observed (at [34]) that the charges under the CDSA where the appellant had routed benefits of his crime out of Singapore using an offshore bank account were a sophisticated act of crime that reflected a separate act of criminality from the cheating charge that he had also been found guilty of. The predicate offence and the offence under the CDSA would usually concern the protection of different interests. As submitted by the Prosecution, the interest protected by the predicate offence would usually be the public interest in preventing and punishing the commission of the relevant illegal act, while the interest protected by the offence under the CDSA would usually be the public interest in making it as hard as possible for criminals to dispose of their ill-gotten gains.

46 In the context of the present case, I agreed with the District Judge that the criminal conspiracy charge and the CDSA charge should be viewed as one transaction and the sentences for the two should thus run concurrently. As observed by Menon CJ in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [40], while it may well be helpful to have regard to such factors as proximity in time, proximity of purpose, proximity of location of the offences, continuity of design and unity (or diversity) of the protected interests in determining if the offences are part of a single transaction, in the final analysis, the determination as to whether the offences fall within the one transaction rule must be undertaken as a matter of common sense. In the present case, the offenders had only brought a total of S$1,000 and RMB6,800 (in the case of Zhou) and RMB4,500 (in the case of Luo) with them on their return trip to China. This was only a small fraction of their share of the stolen proceeds. They had gambled away or spent the remainder. As observed by the District Judge,[21] it was entirely possible—and was in my view highly

probable—that the offenders had removed the few thousand dollars out of jurisdiction simply because they were returning home and were taking whatever was left in their possession along with them. This conclusion was buttressed by the fact that the offenders brought a substantial portion of the monies that they had "removed" from Singapore *back into Singapore* on their second trip here on 24 October 2015. Zhou brought back S$1,000 and RMB2,040 while Luo brought back RMB2,400.

47 Looking at the circumstances as a whole, I was of the view that the District Judge was correct to have run the sentences concurrently.

Conclusion

48 For the reasons above, I allowed the Prosecution's appeals to the extent of enhancing the sentences for the criminal conspiracy charges to 24 months' imprisonment. The appeals filed by Luo and Zhou were correspondingly dismissed. The sentence for the criminal conspiracy charge was to run concurrently with that for the CDSA charge in the case of each offender, resulting in a total of 24 months' imprisonment.

See Kee Oon
Judge

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[21] At [125] of the GD.

Chong Yi Mei (Law Society of Singapore) for the appellant in MA 9093/2016/01 and the respondent in MA 9093/2016/02;
Justin Tan (Trident Law Corporation) for the appellant in MA 9094/2016/01 and the respondent in MA 9094/2016/02;
Joshua Lai and Alexander Woon (Attorney-General's Chambers) for the respondent in 9093/2016/01 and 9094/2016/01 and the appellant in 9093/2016/02 and 9094/2016/02.
