IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 20

Magistrate's Appeal No 9095 of 2022/01

Between

Kong Wei Keong Marcus

… *Appellant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

[Criminal Law — Statutory offences — Penal Code – Computer Misuse and Cybersecurity Act]
[Criminal Procedure and Sentencing – Sentencing]

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Kong Wei Keong Marcus
v
Public Prosecutor

[2023] SGHC 20

General Division of the High Court — Magistrate's Appeal No 9095/2022
Vincent Hoong J
26 January 2023

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Vincent Hoong J:

Introduction

1 In June 2015, the appellant moved in with his then-girlfriend ("the victim"), who was suffering from severe eczema. He took care of her, bought her meals, accompanied her to visit the doctor, and even delayed his intended return to Australia to be with her. In return, the appellant lived rent-free with the victim. What may have started with good intentions, however, turned into an opportunity to exploit. The victim trusted the appellant with access to her credit cards, ATM cards, and mobile phone. The appellant used this access to make a series of unauthorised cash withdrawals and fund transfers from the victim to himself, totalling over S$50,000. When the clueless victim made a police report about these 'mysterious' transfers, the appellant denied knowledge of these transactions, and even lodged his own police report testifying to the same.

2 The appellant was convicted after trial of 53 charges, including 31 charges under s 379 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"), 21 charges under s 3(1) of the Computer Misuse and Cybersecurity Act (Cap 50A, 2007 Rev Ed) ("CMA"), and one charge under s 203 of the Penal Code. The appellant was also granted a discharge amounting to acquittal on a further charge under s 379 of the Penal Code. The District Judge ("DJ") sentenced the appellant to a global term of 17 months and 8 weeks' imprisonment. The DJ's grounds of decision can be found in *Public Prosecutor v Kong Wei Keong Marcus* [2022] SGMC 48 ("GD").

3 The appellant now appeals against both his conviction and sentence.

My decision

4 In relation to the appeal against conviction, the appellant lists, without any elaboration, seven areas of dissatisfaction with the decision by the DJ. I will deal with each of these in turn.

5 First, the appellant asserts there was "an agreement with the victim". In the absence of elaboration by the appellant, I assume that this is similar what the appellant had submitted in the court below – that the victim had agreed to the appellant handling her finances, and specifically, using her ATM cards, credit cards, and online banking on her behalf to spend her money and make transfers to his own bank account. I reject this assertion:

(a) Such an agreement is inconsistent with the behaviour of the appellant. He failed to mention the existence of this supposed agreement when he accompanied the victim to make a police report on 17 August 2015. He failed to mention the agreement when subsequently asked by

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a police officer if he had anything to say about the victim's report. When he made his own police report, he failed to mention the agreement. He again failed to mention the agreement in his statements to the police. When confronted with all this at trial, the appellant was not able to give a reasonable explanation for these omissions.

(b) To the contrary, the appellant even admitted in his police statements that he took the victim's bank cards, withdrew her money, and misused her funds without her knowledge. He told his own psychiatrist on more than one occasion that he used the victim's credit cards without her permission and knew it was wrong.

(c) In light of these admissions, I find that even if the appellant had general physical access to the victim's wallet and mobile phone and had made past transactions of small amounts of money with the victim's explicit permission, he did not obtain her consent for the specific occasions when he took the victim's bank cards and made online transfers without her knowledge.

6 Second, I similarly reject the appellant's assertion that the victim was not a helpful witness. To the contrary, the victim's evidence corroborated the appellant's own account that she had no knowledge of the transactions made by him. I see no reason to disturb the DJ's finding that the victim's evidence was both externally and internally consistent.

7 Third, the appellant contends that there was a "*possibility* of a psychiatric condition", exposing himself to being manipulated by the victim. I note that this is already a watered-down claim from the appellant's closing

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submissions at trial, which stated that the appellant "*had been* suffering from a psychiatric illness" at the time of the recording of his statements.

8 Neither of the medical reports submitted by the appellant attested that his depressive state would have made him more susceptible to manipulation by the victim. Despite this lack of explanation, the appellant called no witnesses to adduce further evidence of the nature of his condition, the treatment that he received for this, or the symptoms of this condition. The appellant had more than sufficient opportunity to adduce these details over the course of trial. Yet, he failed to do so. I therefore reject this contention.

9 Fourth, the appellant claims that the dishonesty element in the charges was "made up" as the victim benefitted from the goods and services purchased. I also reject this claim.

(a) It is clear that the appellant intended to wrongfully gain from the transactions. Even if I accept the appellant's submissions below on the amount of money spent for the victim's benefit, more than S$45,000.00 of the amount transferred to himself is still unaccounted for.

(b) Even for the monies spent on items for the victim, I find that the appellant intended to give himself wrongful gain by misleading the victim into thinking that he had paid for the items, making him a better boyfriend in her eyes and making it more likely he could stay at her house.

10 Fifth, I find that the payments made by his mother to the victim were restitutionary in nature, and not because of a demand of money from the victim

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or for appreciation for housing the appellant. This shows that the appellant himself knew that he dishonestly used the victim's money.

(a) The appellant himself indicated an intention to make restitution in his statements to police. Further, the continual payments from the appellant's mother to the victim even after the appellant had been charged in court point towards a desire to make right a wrong, rather than express appreciation for housing him.

(b) Such a desire was even stated by the appellant's mother herself. In the Whatsapp conversation between the appellant's mother and the victim, adduced by the appellant himself, his mother told the victim that her "only hope is to be able to make up to u one day".

11 Sixth, the appellant contends that the charge under s 203 of the Penal Code was not made out as he did not give information to the police on the alleged offence. This claim is evidently untrue. The appellant clearly stated in his police report that the relevant bank transactions from the victim's POSB account to his POSB account were done without his knowledge.

12 The appellant knew that an offence had been committed, as he had made those transfers himself without the victim's knowledge and consent. For this reason, the appellant also knew that his statement that he did not know about the transactions was false. The charge is hence made out.

13 Having rejected the above arguments by the appellant, I find that the last ground of the appellant's petition of appeal falls away, as I see no reason to disturb the DJ's finding that the appellant's convictions on the 53 charges were proven beyond a reasonable doubt.

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14 I now turn to the appeal against sentence.

15 In relation to the theft charges, the appellant argues that that he should receive a similar sentence to the accused in *PP v Chan Puan Seng* [2007] SGDC 67 ("*Chan Puan Seng*"), and that it is mitigating that the victim benefitted from the offence.

16 I agree with the DJ that little mitigating weight should be placed on the fact that the victim benefited from how some of her money was spent. Less than 10% of the stolen money was spent for the benefit of the victim. The victim was not given a choice in how her own money was spent. In addition, the manner in which the appellant took advantage of the victim's resources, making purchases on credit without her knowledge, exposed her to increasing financial liabilities for purchases she did not know she needed to pay off. The victim suffered adverse financial and professional consequences as a result.

17 I also find that the case of *Chan Puan Seng* should be distinguished from the present case.

(a) First, the quantum stolen in the present case is almost ten times as large as the $6,090 in *Chan Puan Seng.*

(b) Second, the accused in *Chan Puan Seng* spent "most" of the stolen money on the victim, while the appellant only spent less than 10% of the stolen money on the victim.

(c) Third, the sentence imposed in *Chan Puan Seng* was explained by the DJ to be on the "lower end" of the usual range of sentences handed out for such offences. It was well within the DJ's discretion to

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impose a sentence outside the lower end of the usual range, given the multiple aggravating factors present, particularly the appellant's abuse of trust and lack of remorse.

18 Conversely, the sentences for the individual charges imposed by the DJ are comparable to more recent reported decisions involving similar sums of money and similar modus operandi, such as *PP v Teo Kai Lin* [2014] SGDC 186 and *PP v Balasubramaniam* [2013] SGDC 119.

19 In relation to the s 203 Penal Code charge, the appellant argues that the custodial threshold has not been crossed. I find that the DJ rightly imposed a period of imprisonment of two weeks for this charge.

(a) I consider the following factors, listed in *Koh Yong Chiah v PP* [2017] 3 SLR 447 and *PP v Chua Wen Hao and another appeal* [2021] SGHC 70, to point towards the imposition of a custodial sentence:

(i) the appellant gave false information to shield himself from investigation;

(ii) the predicate offence concealed is serious, involving the misappropriation of over $50,000; and

(iii) the motive of the appellant was not benign. By feigning ignorance of the transactions in the police report, the appellant was able to mislead the victim into thinking that he was not responsible for the transactions, and thus continue the relationship and retain her trust.

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20 I therefore find that the individual and global sentences imposed by the DJ cannot be said to be manifestly excessive.

21 If anything, the DJ would not have erred in ascribing more weight to the appellant's lack of remorse. The appellant's actions in this regard are a sideshow of one self-serving action after another. He rejected the opportunity to come clean about his offences when the victim made a police report. He lied to the police to cover his tracks. He feigned his ignorance about his misdeeds to his then-girlfriend so that he could continue to stay in her home. He failed to file his medical reports within the deadlines given by the court.

22 Even in his petition of appeal, unaccompanied by any written submissions, the appellant now tries to suggest that it was the *victim* who could have manipulated him. It defies logic why the victim would have manipulated the appellant into transferring more than $45,000 of her own hard-earned money into the appellant's personal bank accounts for his own enrichment. This smokescreen by the appellant is an attempt to run from the mirror of his own manipulation of others - of his then-girlfriend, of the police, of the court, and even of his own parents, who spent their own money to attempt to make up for the appellant's misdeeds.

23 In my view, an enhancement to the appellant's sentence on these grounds by the DJ would not have been manifestly excessive. I also note that the appellant's cavalier attitude towards others continues to be reflected in his approach to this set of proceedings. After filing his Notice of Appeal on 20 May 2022, the appellant did nothing further to obtain legal representation until September 2022. Even then, the appellant failed to fulfil the pre-requisites to engage the lawyer he approached. Despite knowing that he would not be

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represented by counsel at the current hearing for the past four months, the appellant did not inform the court beforehand to request an adjournment, did not make any attempt to engage any other lawyer, did not take the time to prepare his own submissions, and did not even bother to bring to court the documents that had been served to him personally. The appellant instead expected to stroll in to court and immediately obtain an adjournment based on his bald assertion that he could accomplish in the next week what he could not accomplish over the past seven months since May 2022. This entitled behaviour by the appellant rings of disrespect to others and strengthens my finding that the appellant has shown no remorse for his offences.

24 For these reasons, I dismiss the appeal against conviction and sentence.

Vincent Hoong
Judge of the High Court

Appellant in person;
Edwin Soh (Attorney-General's Chambers)
for the respondent.

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