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

[2022] SGHC 98

Magistrate's Appeal No 9279 of 2021

Between

Khoo Moy Seen

And

Public Prosecutor

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Sentencing framework — Section 9(1) Remote Gambling Act 2014 (Act 34 of 2014)]

Khoo Moy Seen
v
Public Prosecutor

[2022] SGHC 98

General Division of the High Court — Magistrate's Appeal No 9279 of 2021
Vincent Hoong J
4 May 2022

23 May 2022 Judgment reserved.

Vincent Hoong J:

Introduction

1 This appeal provides an opportunity for this court to consider the sentencing framework for an offence under s 9(1) of the Remote Gambling Act 2014 (Act 34 of 2014) ("RGA").

2 I begin with a summary of the facts. For about one year, the appellant acted as an agent for one "Ah Boy" in facilitating illegal 4D remote gambling activities. The appellant had at least 15 punters under her, and she would charge them an illegal rate of $1.60 for a "big ticket" and $0.70 for a "small ticket". By contrast, the official rates charged by the Singapore Pools is $2 for a "big ticket" and $1 for a "small ticket".[1] The appellant was arrested in December 2020. Investigations revealed that between 15 November 2020 and 29 November

[1] Record of Appeal ("ROA") pp 6–7, paras 5–6.

2020, she assisted in the conduct of remote gambling in accordance with arrangements made by her principal, "Ah Boy", by:[2]

(a) Managing an agent account on the website www.sol68.com, and accepting and placing 4D bets amounting to $12,010.40 on behalf of at least 15 punters on the agent account; and

(b) Settling bet monies with the various punters on an ad-hoc basis.

3 As the website www.sol68.com is not an exempt operator under s 40 of the RGA, the appellant was charged with an offence punishable under s 9(1)(*e*) of the RGA.[3] She pleaded guilty to the charge and admitted to the Statement of Facts ("SOF"), which I have briefly summarised above, without qualification.

4 The District Judge ("DJ") applied the sentencing framework for offences under s 9(1) of the RGA as set out by the court in *Public Prosecutor v Loy Jit Chan* [2021] SGMC 9 ("*Loy Jit Chan*"). This sentencing framework was adapted from the framework promulgated by this court in *Koo Kah Yee v Public Prosecutor* [2021] 3 SLR 1440 ("*Koo Kah Yee*") for offences under s 11(1) of the RGA.

5 In applying the sentencing framework in *Loy Jit Chan*, the DJ considered that the harm caused by the appellant was "in the middle of the low band" as reflected by the total bet amount stated in the charge. Nonetheless, in his view, her culpability fell into the medium category as she had 15 punters under her and she had operated her services for a period of about one year. She played a significant role not only in placing bets on behalf of the punters, but

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2 ROA p 7, para 10.

3 ROA p 4.

also in collecting the moneys from them and meeting "Ah Boy" to settle the payments. Based on a 9% commission, without including any bonus obtained from wins by her punters, she would have earned about $1,000.[4]

6 Given the harm caused and her culpability, and taking into account her early plea of guilt and clean record, the DJ sentenced the appellant to eight weeks' imprisonment and a fine of $20,000, which is the minimum fine that can be meted out under s 9(1) of the RGA. The DJ's grounds of decision can be found in *Public Prosecutor v Khoo Moy Seen* [2022] SGMC 1 ("GD").

7 The appellant now appeals against the sentence.

8 Before me, the appellant argues that the DJ erred in assessing her culpability on the basis of a one-year period, despite the charge specifying an offending period of only two weeks (*ie,* from 15 to 29 November 2020). According to the appellant, the DJ erred by assessing her culpability to be medium despite her minor role, and that the sentence meted out was excessive and inconsistent with sentencing benchmarks. The appellant submits that an appropriate sentence would be a fine of $20,000 without imprisonment.

The appropriate sentencing framework

9 To begin, an offence under s 9(1)(*e*) of the RGA, for which the appellant is charged, is made out when an agent (whether inside or outside Singapore) assists in any conduct described in ss 9(1)(*a*)–(*d*) of the RGA, and as a result facilitates the participation by one or more individuals in unlawful remote gambling as defined in s 8 of the same Act. In full, s 9(1) of the RGA states:

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4 ROA pp 51–53.

> **Providing unlawful remote gambling service for another**
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> **9.**—(1) A person (called an agent) who, inside or outside Singapore —
>
> > (*a*) organises, manages or supervises remote gambling by others in accordance with arrangements made by a principal of the agent, which may include —
> >
> > > (i) inviting others to gamble using remote communication in accordance with those arrangements; or
> > >
> > > (ii) placing, making, receiving or accepting bets using remote communication in accordance with those arrangements;
> >
> > (*b*) distributes a prize offered in remote gambling by others in accordance with arrangements made by a principal of the agent;
> >
> > (*c*) distributes money or money's worth paid or staked by others in remote gambling in accordance with arrangements made by a principal of the agent;
> >
> > (*d*) facilitates participation by others in remote gambling in accordance with arrangements made by a principal of the agent, which may include allowing a person to participate in such remote gambling; or
> >
> > (*e*) assists in any conduct described in paragraph (*a*), (*b*), (*c*) or (*d*),
>
> and as a result facilitates one or more individuals to commit an offence under section 8, shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 or to imprisonment for a term not exceeding 5 years or to both.

10 In determining the appropriate sentence to imposed, reference may be made to the decision of *Koo Kah Yee*. There, Sundaresh Menon CJ ("Menon CJ") promulgated a five-step sentencing framework for offences under s 11(1) of the RGA. S 11(1) provides that:

> **Prohibition against Singapore-based remote gambling service**
>
> **11.**—(1) A person who provides a Singapore-based remote gambling service shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $500,000 or to imprisonment for a term not exceeding 7 years or to both.

Under the five-step process in *Koo Kah Yee* (at [68]–[90]), the sentencing court is tasked with:

(a) identifying the level of harm caused by the offence and the level of culpability of the offender;

(b) identifying the indicative sentencing band, having regard to the levels of harm and culpability;

(c) identifying the appropriate starting point within the indicative sentencing range;

(d) making adjustments for offender-specific aggravating and mitigating factors; and

(e) making further adjustments to take into account the totality principle.

11 However, as can be seen, while the maximum fine and imprisonment term under s 9(1) is $200,000 and five years respectively, the maximum fine and imprisonment term under s 11(1) is $500,000 and seven years respectively. The increased sentences that can be meted out under s 11(1) reflects the difference in severity between the offences – while s 9(1) seeks to punish *agents* who facilitate one or more aspects of illegal remote gambling arrangements made by their principal, s 11(1) punishes the remote gambling operator (or

principal) directly for providing remote gambling services: see *Koo Kah Yee* at [52].

12 The breadth of conduct punishable under s 9(1) is also more specifically delineated than that in s 11(1). Section 9(1) of the RGA punishes agents who engage in a range of conduct covering different aspects of illegal remote gambling activities in accordance with arrangements made by their principal as specified in ss 9(1)(*a*)–(*d*). In addition, s 9(1)(*e*) also punishes agents who *assist* in the aforementioned conduct in ss 9(1)(*a*)–(*d*). By contrast, s 11(1) punishes any "person who provides a Singapore-based remote gambling service".

13 Notwithstanding the differences between the two provisions, ss 9(1) and 11(1) of the RGA are broadly similar in that they both seek to penalise persons for facilitating and providing unlawful remote gambling services, whether in their capacity as an agent or as a principal. For this reason, the five-step sentencing framework for s 11(1) of the RGA (see *Koo Kah Yee* at [68]–[90]) can, and has been, adapted for s 9(1) of the RGA, with the revised sentencing ranges as follows (*Loy Jit Chan* at [33]):

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine of at least $20,000 and/or a short term of imprisonment	Up to 9 months' imprisonment	9 months to 2 years' imprisonment
Medium	Up to 9 months' imprisonment	9 months to 2 years' imprisonment	2 to 3 years' imprisonment
High	9 months to 2 years' imprisonment	2 to 3 years' imprisonment	3 to 5 years' imprisonment

14 In my judgment, these adjusted ranges adequately calibrate for the different maximum imprisonment terms under ss 9(1) and 11(1) of the RGA, and also ensures that the full spectrum of sentences under s 9(1) of the RGA are utilised. Such sentencing ranges, when seen in the context of the five-step framework promulgated in *Koo Kah Yee*, are also sufficiently flexible to account for the different types of conduct captured under ss 9(1)(*a*) to 9(1)(*e*) of the RGA. Indeed, the revised sentencing ranges were applied by the DJ in the court below and notwithstanding the appellant's disagreement with the eventual sentence, no arguments were made before me by either the appellant or the Prosecution against the application of the sentencing ranges above.

15 At this juncture, it bears emphasis that such a sentencing framework serves simply as a guidepost for arriving at a sentence appropriate for the specific facts of each case, and is not meant to be applied rigidly: see, *eg, Koo*

Kah Yee at [84]; *Aw Soy Tee v Public Prosecutor* [2020] 5 SLR 453 at [31]. As has been repeatedly cautioned, sentencing guidelines or frameworks "are a means to an end and the relevant end is the derivation of sentences that are just and are broadly consistent in cases that are broadly similar"; they "are not meant to yield a mathematically perfect graph that identifies a precise point for the sentencing court to arrive at in each case" (*Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266 at [20]).

16 I should add here that for an offence under s 9(1), a fine would generally be imposed in addition to any custodial sentence to disgorge any profits made by the offender. In this regard, I agree with the following observations made by Menon CJ in *Koo Kah Yee* (at [38]–[39]) in the context of an offence under s 11(1) of the RGA:

> 38 In my view, in the context of an offence under s 11(1) of the RGA, a fine would generally be imposed in addition to any custodial sentence to disgorge any profits made by the offender. As I recently noted in *Public Prosecutor v Su Jiqing Joel* [2020] SGHC 233 ("*Joel Su*"), the imposition of a fine to disgorge profits serves both a deterrent and retributive function (at [48]–[51]). In particular, I agreed with the following observations made by Pretheroe J in *Public Prosecutor v Goh Ah Moi (F)* [1949] MLJ 155 at 156 …:
>
> > … the penalty imposed should be such that ***it will take away from the convicted offender the desire to offend in a similar manner again***. Quite clearly a balance of income left in [an offender's] pocket after payment of a fine will have precisely the opposite effect and for a Court to leave any such balance would be a wrongly application of the accepted principles. [emphasis added in bold italics]
>
> …
>
> 39 In the context of remote gambling offences, deterrence similarly calls for the imposition of fines to disgorge the profits of offenders who may also be sentenced to imprisonment. This is essential to dispel the notion that the pecuniary rewards

> reaped from unlawful remote gambling activities can be enjoyed without consequence. Therefore, whilst s 11(1) of the RGA permits the issuance of a fine only, the general rule should be that aside from cases where both harm and culpability fall on the lowest end of the spectrum, a combination of a fine and custodial sentence would be warranted… Even where a fine alone is imposed, following from my judgment in *Joel Su*, it would be appropriate to calibrate the fine to achieve the twin aims of disgorging the profits from the unlawful endeavour and also of punishing the offender.
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> [emphasis in original]

Application of framework

The level of harm and culpability

Level of harm

17 I now proceed to consider the appropriate sentence in this case. I begin by first considering the level of harm and culpability. In determining the level of harm, the court may have regard to the following offence-specific factors: (a) the aggregate value of the bets involved; (b) the involvement of a syndicate; (c) the involvement of a transnational element; and (d) the difficulty of detection: see *Koo Kah Yee* at [57]–[60].

18 Here, the appellant was involved in a syndicated offence, albeit with a lower level of sophistication and extent than the offender in *Koo Kah Yee,* whose syndicate generated a total betting revenue of more than $18m between 22 November 2015 to 14 August 2016 alone. Nonetheless, there was some difficulty in detecting the appellant's actions, as the placing of bets was done on the online sphere, rendering it inherently more difficult to detect (see, *eg, Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120 ("*Lim Bee Ngan Karen*") at [67]).

19 Having regard to all of these factors, I agree with the DJ that the harm caused is in the middle of the low range (GD at [43]). This is consistent with the case of *Loy Jit Chan*, where the District Judge opined that the level of harm for charges involving bets of $25,339.80 and $23,927.75 was "at the lower end of the moderate range" (see *Loy Jit Chan* at [35(b)] and [35(c)]).

Level of culpability

20 As regards culpability, the following factors may be relevant: (a) the degree of planning and premeditation; (b) the level of sophistication; (c) the offender's role; (d) personal gain; and (e) the duration of offending: see *Koo Kah Yee* at [61]–[65].

21 For example, in *Loy Jit Chan,* in relation to the charge which involved bets amounting to $87,898.10, the District Judge considered that his level of culpability was in the middle of the high range given his significant involvement and high position within the hierarchy of the set-up (at [35(a)]). This was because the offender was a master agent, and this particular charge concerned the managing of a master agent account. The master agent account allowed the offender to issue agent accounts for agents under him. He was also able to act as an agent himself, and occupied a position just below his principal, one "Ah Siang". The offender also enlisted another person to work for him as a runner to facilitate his dealings with the agents under him, and he would gain 12 cents from every dollar bet. However, the District Judge found the offender's culpability to be lesser in respect of the other two charges which involved bet amounts of $25,339.80 and $23,927.75. In relation to the former charge, the offender's culpability was found to fall within the medium range as it involved the creation of an agent account. In relation to the latter charge, the offender's

culpability was situated at the middle of the low range as it involved the creation of a player betting account involving only one punter.

22 In *Public Prosecutor v Tai Li Hui Matthew* [2022] SGDC 39 ("*Matthew Tai*"), the offender pleaded guilty to an offence under s 9(1)(*e*) of the RGA, among others. The offender who was a worker in an illegal online gambling scheme, facilitated the purchase of credits for the complainant to play online poker via an application, "PPPoker", multiple times over the course of three days. The level of sophistication of his offending conduct was low as he messaged people in a general group chat and waited for a response from interested parties. He was only involved in the offending conduct for a short period of time and did not appear to derive any personal gain from the scheme. Having regard to the decision in *Koo Kah Yee*, the Senior District Judge assessed that the levels of harm and culpability were low. Nonetheless, "given the strong need for general deterrence in respect of remote gambling offences", the offender was sentenced to one week's imprisonment for his offence (at [35]–[36]).

23 In order to obtain a better assessment of the appellant's culpability, reference may also be made to several earlier reported decisions, although their utility is limited as they were decided before *Koo Kah Yee* and *Loy Jit Chan*, and so did not entail the application of the five-step sentencing framework.

24 In *Public Prosecutor v Low Jing Da* [2017] SGDC 81 ("*Low Jing Da*"), the offender pleaded guilty to two counts under s 9(1)(*d*) of the RGA for facilitating the participation of others in remote gambling in accordance with arrangements made by his principal, one "Ah Heng". The offender possessed a "master agent account" which enabled him to create agent accounts for other agents. Once those agent accounts were created, the agents would recruit

punters and create punter accounts for them, allowing them to place illegal bets online. The offender would get to "fight 10%" of the bets placed by these punters. This meant that if a punter lost $100, the offender would earn $10, and if a punter won $100, the offender would lose $10. Between end June and end July 2015, the offender created two agent accounts for one "Keith" and one "Arav", both of whom went on to recruit several punters. During the one-month period, "Keith" received bets amounting to $8,436, while "Arav" received bets amounting to $15,914. The District Judge sentenced the offender to nine months' imprisonment and a fine of $30,000 in respect of the charge related to "Arav" and nine months' imprisonment and a fine of $20,000 in respect of the charge related to "Keith", Both sentences were ordered to run concurrently. In sentencing the offender, the District Judge observed that he had been involved in illegal soccer betting for four to five years in his capacity as both punter and agent before he was charged in court (at [13]). He was also "high in the hierarchy of agents" and was "the go-between the agents below him and the syndicate that ran the illegal online gambling activity". Further, he trained agents and his conduct was exploitative as he had recruited "Keith" with the knowledge that the latter was not making much money (at [10]–[11]). The offender also threw away one of his mobile phones that he had used to conduct illegal gambling activities, and such obstructive conduct warranted a specific deterrent sentence (at [12]). The offender's appeal was dismissed by the High Court.

25 More recently, in *Public Prosecutor v Ng Chuan Seng* [2020] SGMC 3, the offender was an agent who faced two charges under s 9(1)(*d*) of the RGA for facilitating the participation by others in remote gambling in accordance with arrangements made by his principal, one "Ah Mark". The total bet value in the charges (for the period 28 February 2018 to 14 March 2018) were $16,958 and $17,401 respectively. In sentencing the offender, the District Judge

observed that the offender had "acted as a facilitator in the unlawful remote gambling" and that he had been issued with a senior master agent account and he in turn issued four accounts for punters to place bets on the illegal remote gambling website. The offender also received a commission of 10% of the total bet value accepted (at [37]). Given this, and having considered that he was a first-time offender who pleaded guilty on the first day of trial, the District Judge sentenced the offender to four months' imprisonment and a fine of $30,000 for each charge, with the sentences to run consecutively (at [41]–[42]). The appeal against sentence was withdrawn.

26 In this case, there was a clear and conscious decision on the appellant's part in acting as an agent for "Ah Boy" over a prolonged period of about a year. While she was merely an agent and appeared to be on the lower end of the hierarchy as compared to the offenders in *Loy Jit Chan* and *Low Jing Da*, she nonetheless worked for personal gain, and stood to gain a 9% rebate on the total amount of bets collected and a further 5% commission should any of her punters win a prize.[5] This may be contrasted with the offender in *Matthew Tai,* who did not appear to derive any personal gain for his role, and whose offending conduct spanned a much shorter period and with less sophistication.

27 Additionally, the appellant actively secured at least one punter, one Ong, to place 4D bets through her. In total, she had at least 15 punters placing bets through her.[6] These bets were not insignificant, and even excluding her 5% commission, she stood to earn about $1,000 in rebates in the two weeks that she was charged (9% of $12,010.40, being the value of the bets placed with the appellant between 15 to 29 November 2020). The appellant also took steps to

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5 ROA p 6, para 5.

6 ROA p 7, para 8(a).

avoid detection by providing false names for her punters and herself – for example, Ong's punter account was labelled "KK", and her own agent account was styled as "Aag6127".[7]

28 Furthermore, while the appellant's charge pertained only to bets of about $12,000 over a two-week period, she admitted in the SOF (at [6]) that she had been working for the syndicate for about a year.[8]

29 In this respect, it may be noted that periods of offending that are not part of the charge, but which the offender admits to without qualification in the SOF, can be taken into consideration in determining the appropriate sentence. For example, in *Koo Kah Yee,* Menon CJ observed (at [77]) that "the offence, as stated in the proceeded charge, took place over a substantial period of nearly two years (from February 2015 to November 2016), though in fact the appellant had been working for the syndicate since February 2012." As a result, the offender's duration of offending was "significantly longer" than that of her colleague "who only joined in July 2013", and her culpability thus fell within the low end of the medium band (see *Koo Kah Yee* at [81]–[82]).

30 Similarly, in *Lim Bee Ngan Karen,* Chao Hick Tan JA "note[d] from the Statement of Facts that the [offender] obtained her online football and 4D betting accounts in early June 2010" (at [66]). Given the "length of time over which she carried out her illegal activities", and even though the proceeded charges against the offender pertained to bets received in June 2012 only, Chao JA found that it was not appropriate to regard the offender as a first-time offender (at [69]).

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7 ROA pp 6–7, paras 5 and 8.

8 ROA p 7, para 6.

31 Considered in totality, I am of the view that the appellant's culpability is on the higher end of the low range, at least.

The indicative sentencing range and the starting point within the indicative sentencing range

32 Given that the level of harm is in the middle of the low range and the level of culpability is *at least* on the higher end of the low range, the indicative starting sentence would be a fine of at least $20,000 *coupled with* about three months' imprisonment. A fine in addition to the imprisonment term is necessary to negate the profit motive of remote gambling activities: see *Koo Kah Yee* at [52].

33 In my view, a mere fine, as submitted by the appellant, would be incongruous with the reported decisions discussed above; in all of those cases, agents who acted for principals for personal gain received a custodial sentence and a fine.

34 Furthermore, a mere fine would not adequately serve the ends of deterrence. It should be recalled that the appellant's illegal activities were only put to a halt upon her arrest. The appellant was also proximate to the principal, and her role as an agent could not be described as minor in any way. She also operated for personal gain, and the sums involved in the short two-week period for which she has been charged were not insignificant. Such illegal online gambling activities are also inherently difficult to detect, and the temptation for punters and agents alike are ever-present given the ease and allure of making a quick profit. This may be contrasted with brick-and-mortar gambling where some form of structural and regulatory control, such as prohibitions of access, can be more easily put into place. As such, a sufficiently stringent sentence is

necessary, both to deter like-minded individuals from engaging in the appellant's conduct, and to deter further offending by the appellant herself.

Adjustment for offender-specific factors

35 That said, I agree with the DJ that a downward adjustment of the sentence is merited in this case as the appellant had pleaded guilty at an early stage and has no relevant antecedents. However, caution should be had in according too much weight to the appellant's lack of antecedents. While the proceeded charges pertained to a two-week period only, the appellant had in fact been engaged in her illegal conduct for about a year, with several punters betting through her, before she was arrested. It was simply fortunate that she was not arrested earlier (see *Lim Bee Ngan Karen* at [69] and *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [15]).

Conclusion

36 Having regard to all of the above, the sentence of eight weeks' imprisonment and the minimum fine of $20,000 cannot be said to be manifestly excessive. If at all, it was somewhat lenient given that, as observed, the level of culpability in this case was *at least* on the higher end of the low range.

37 The appeal is dismissed.

Vincent Hoong
Judge of the High Court

Chia Boon Teck and Khor Zhen Yan (Chia Wong Chambers LLC)
for the appellant;
Gabriel Choong and Chong Ee Hsiun (Attorney-General's Chambers)
for the respondent.