IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 21

Magistrate's Appeal No 9147 of 2019

Between

Chong Kum Heng

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory Offences] — [Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed)]
[Criminal Law] — [Statutory Offences] — [Penal Code (Cap 224, 2008 Rev Ed)]
[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Chong Kum Heng
v
Public Prosecutor

[2019] SGHC 21

High Court — Magistrate's Appeal No 9147 of 2019
See Kee Oon J
30 October 2019

30 January 2020 Judgment reserved.

See Kee Oon J:

1 This is the Appellant's appeal against the decision of the District Judge ("the DJ") in *Public Prosecutor v Chong Kum Heng* [2019] SGDC 146 ("the decision below").

2 The Appellant was charged with three counts of criminal breach of trust ("CBT") as a servant ("the CBT offences") and six counts of using the benefits of his CBT offences ("the CDSA offences"). The DJ convicted him of all nine charges and sentenced him to a total of 39 months' imprisonment.

3 A somewhat unusual feature of this case is that the Appellant's principal did not deem itself to have suffered direct loss or harm as a result of the Appellant's actions. However, for reasons which I shall elaborate upon, this does not negate the Appellant's criminal liability or attenuate his culpability for the wrongful gain that he had obtained.

4 While I agree with the DJ that the CBT and CDSA offences have been made out, I am of the view that the sentences imposed are excessive. I thus impose a reduced aggregate sentence of 32 months' imprisonment upon the Appellant.

5 The reasons for my decision are as follows.

Facts

Background

6 The Appellant claimed trial to a total of nine charges. Three of these charges were CBT charges pursuant to s 408 of the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). The other six charges were pursuant to s 47(1)(*c*) read with s 47(6)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA").

7 In the proceedings below, the parties agreed to a statement of facts ("ASOF"). I set out below a summarised version of the ASOF together with other undisputed facts.

8 The Appellant was a project manager employed by RCS Engineering Pte Ltd ("RCS") which is in the business of carrying out electrical and cabling works ("electrical works") as a sub-contractor.

9 The Appellant reported to Sia Ik Ting ("Sia"), who was the main witness for the Respondent. For all intents and purposes, Sia owned RCS, which he founded in 2001. Sia was the Appellant's boss. RCS was engaged to install electrical works at two building projects. These electrical works included the installation of copper cables. Upon the completion of these works, there would

usually be excess cables ("wastage") ranging from a few centimetres to two metres in length. It was the obligation of RCS to clear the wastage from the work site.

10 RCS left it to its project managers (including the Appellant) to manage the disposal of the wastage. Project managers may request RCS's sub-contractors to dispose of the wastage. They may also dispose of the wastage themselves by selling them as scrap. The sale proceeds may thereafter be used for site expenses and/or personal usage and out of pocket expenses and incentives (for staff) which may not be claimable under RCS's petty cash.

11 Examples of such site expenses/incentives include reimbursement for taxi fares so that engineers and workers may come to work early or work late/overtime; purchase of food and drinks for site staff and workers or the main contractor's hoisting/lift operators when RCS required them to work after office hours; or replacement of missing test instruments and tools.

12 The Appellant handled the disposal and sale of wastage in respect of two projects and deposited the sale proceeds into his bank accounts as follows:

Account	Amount	Date
OCBC Acc 1	$12,000	14 May 2012
POSB Acc 1	$30,000	16 March 2013
POSB Acc 1	$29,000	4 April 2013

OCBC Acc 2	$30,000	10 June 2013
OCBC Acc 2	$15,000	12 October 2013
POSB Acc 1	$9,000	11 March 2014
POSB Acc 1	$29,000	15 November 2014
POSB Acc 1	$20,000	22 March 2015

13 The Appellant also deposited $40,000 on 10 April 2013 into another POSB bank account ("POSB Acc 2"), which was a joint account held by the Appellant and his mother. According to the Appellant, however, this was his mother's savings, rather than sale proceeds from the wastage. Apart from this deposit, it is not in contention that the remaining deposits represented proceeds of the sale of wastage by the Appellant. The total amount of deposits, inclusive of the $40,000, was $214,000.

14 The Appellant subsequently withdrew various sums of money for the following purposes:

Date	Withdrawal amount (by cheque)	Purpose of withdrawal
18 March 2013	$42,450	5% Booking Fee for a

		condominium unit ("the condominium unit")
12 April 2013	$79,500	Payment to Commissioner of Stamp Duties for the condominium unit
7 May 2013	$127,350	Deposit for the purchase of the condominium unit
11 March 2014	$9,428.91	Payment of charges incurred on a Citibank credit card
17 November 2014	$25,300	Payment of a deposit for the purchase of a Toyota Harrier vehicle
27 March 2015	$54,615	Placement of a insurance term deposit with Prudential Assurance

15 The Appellant's withdrawals and subsequent spending form the subject-matter of the six CDSA charges.

The DJ's decision

16 With regard to the CBT offences, the DJ found, relying on the Appellant's statements to the Corrupt Practices Investigation Bureau ("CPIB"), that the disputed $40,000 deposit constituted sale proceeds rather than the Appellant's mother's savings (see the decision below at [35]).

17 The DJ also found that the Appellant had been entrusted with the proceeds arising from the sale of the wastage, and had acted dishonestly in misappropriating those sale proceeds (see the decision below at [48] and [67]).

18 As for the CDSA charges, the DJ held that the sale proceeds, when deposited into the Appellant's various bank accounts, had "tainted" the entire pool of funds (see the decision below at [69]). The Appellant had then used these "tainted" funds in his purchase of the condominium unit and car, as well as payment for credit card charges and term insurance. His usage of the "tainted" funds constituted the essential element of the CDSA offences (see the decision below at [76]).

19 Finally, the DJ sentenced the Appellant to a global imprisonment sentence of 39 months (see the decision below at [93]). The sentences in respect of two CBT charges (the 5th and 6th Charges) and one CDSA charge (the 11th Charge) were ordered to run consecutively, with those in respect of the remaining charges to run concurrently.

20 In reaching his decision, the DJ noted that then counsel for the Appellant neither sought to distinguish any of the sentencing precedents raised by the Respondent, nor made submissions on sentence except for a request for a non-custodial sentence (see the decision below at [87]–[88]).

The parties' cases

21 In their submissions on appeal before me, the parties took diametrically opposed positions. I shall proceed to outline their main submissions.

22 Counsel for the Appellant's submissions comprised three main portions, focusing on the CBT offences, the CDSA offences and the imprisonment term imposed by the DJ.

23 Counsel for the Appellant emphasised how the Appellant had not been entrusted with dominion over the consequential sale proceeds. He submitted that the Appellant had not been dishonest in his actions, and that the DJ placed excessive weight on the testimony of the Respondent's witnesses – Sia and Kuik Sin Pin ("Kuik") – who had both testified as to the manner of disposal of wastage and the consequent usage of the sale proceeds if any. Kuik is the executive director of Sim Lian Group Limited, of which RCS is a subsidiary. Further, counsel for the Appellant contended that the DJ had failed to appreciate the factual background of the present case. Specifically, the CBT charges were not made out as the Appellant was merely dealing with wastage that RCS itself deemed to be of no value. Additionally, CBT could not be said to have occurred since RCS did not take issue with the Appellant's collection and sale of the wastage.

24 Counsel for the Appellant's main contention with the DJ's decision to convict the Appellant under the CDSA was that the CDSA applies only to money laundering offences, and the Appellant was not found to have been guilty of such offences. In addition, he argued that the CDSA and CBT charges are premised on the same facts, which triggers the rule against double jeopardy.

25 Finally, it was argued that both the individual and aggregate imprisonment sentences that the DJ imposed were excessive.

26 The Respondent, on the other hand, essentially argued that I should affirm the DJ's reasoning and uphold his decision.

Issues to be determined

27 The following key issues arise for my determination in this appeal:

(a) Whether the DJ erred in convicting the Appellant in relation to the CBT offences;

(b) Whether the DJ erred in convicting the Appellant in relation to the CDSA offences; and

(c) Whether the aggregate imprisonment sentence of 39 months is excessive.

The appeal against conviction for the CBT offences

Whether the Appellant was entrusted with the sale proceeds

28 The primary question is whether the Appellant had been entrusted with the proceeds arising from the sale of the wastage. In making a finding that the Appellant had indeed been so entrusted, the DJ relied on the testimony of Sia and, to a lesser extent, that of Kuik as well.

29 In the proceedings below, Sia testified that while there were no official written company policies on the disposal of wastage, the longstanding practice in RCS was for the consequential sale proceeds to be used by RCS's senior managers and project managers to "take care of the company property", and

"for staff benefit". This was communicated to RCS's project managers during informal discussions.

30 A letter setting out RCS's policies on wastage, which was enclosed in an email sent by Sia to the Appellant dated 13 December 2017 (exhibit D4), confirms and supports this longstanding practice. The letter, entitled "Company Policies on Excess Materials and Second Job" ("the Company Policy email"), states that project managers may:

> … keep the sale proceeds for site expenses and/or for personal usage and out of pockets expenses and incentives which may not be claimable under our petty cash. Examples of such site expenses/incentives are taxi fare for Site Engineers and Workers to come in earlier or work late/overtime, food and drinks for site staff and workers, main contractor hoisting/lift operators when we require them to work after hours, as we do not provide meal allowance, replacement of missing test instruments and tools …

31 While the term "personal usage" was indeed stated as an acceptable use of the sale proceeds of wastage, Sia had explained in cross-examination that it had to be "project related" and "you cannot say personal usage is personal" (see the decision below at [58]). The examples given by Sia in fact make it unambiguously and amply clear that RCS never envisioned that a project manager could simply pocket the sale proceeds and enrich himself personally. Instead, the sale proceeds were to be used for the benefit of RCS's staff and workers or for miscellaneous worksite expenses. The flexibility in the company's policy lay in RCS not requiring its project managers to strictly account for how the sale proceeds were used. With this "honour system" that RCS adopted, project managers were trusted to use their discretion judiciously and responsibly.

32 I agree with the DJ's finding that the Appellant was indeed entrusted with dominion over the sale proceeds arising from the sale of the wastage. The DJ correctly relied on the Appellant's statements to the CPIB admitting that Sia had communicated relevant instructions relating to the wastage to him. The Appellant was well aware of the fact that RCS did have policies in place for the use of the sale proceeds (see below at [39]). Further, Sia had confirmed that there was a longstanding practice in place in RCS pertaining to these matters, corroborated by Sia's email cited above at [30].

Sia's credibility

33 The DJ found that Sia was "completely objective and honest as a witness". In contrast, he doubted the Appellant's credibility (see the decision below at [61] and [66]).

34 As a starting point, an appellate court should be slow to overturn a trial judge's findings of fact, especially where they hinge on the trial judge's assessment of the credibility and veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence (see *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [34]).

35 I am unable to see any reasonable basis to challenge the DJ's finding that Sia was an honest and reliable witness. Sia's evidence on a number of matters went against RCS's interests. For instance, Sia accepted that RCS did not have any official written company policies relating to the disposal of the wastage (see above at [29]) and that he was the person who had inserted the phrase "and/or for personal usage" in the Company Policy email (exhibit D4). Sia also openly expressed a predisposition towards wanting to help the Appellant. He had no reason to wrongly implicate the Appellant. He prepared a

testimonial for the Appellant to assist the latter in his mitigation plea in the proceedings below, stating that he had been "an excellent employee". The DJ was fully entitled to accept that Sia was a candid and credible witness.

Whether the Appellant had acted dishonestly

36 A finding of dishonesty must be made before an accused can be said to be guilty of a CBT offence. It is settled law that in order to establish such a finding, the accused must know that the gain or loss was wrongful; where it can be shown that the accused genuinely believed that he was legally entitled to perform the relevant transactions, dishonesty would not be present (see *Public Prosecutor v Lam Leng Hung* [2017] 4 SLR 474 ("*Lam Leng Hung*") at [178], citing *Ang Teck Hwa v Public Prosecutor* [1987] SLR(R) 513 at [36] and *Tan Tze Chye v Public Prosecutor* [1997] 1 SLR(R) 876 at [49]).

37 As stated above at [29]–[30], Sia gave firm evidence that according to company policy, where sale proceeds arose from the managers' disposal of wastage, they were to be used for the welfare of RCS's employees or for worksite expenses. The Appellant was conscious of this, as well as the fact that it would be improper for him to retain such proceeds, especially when they were of a large quantum.

38 On the Appellant's own evidence, instead of applying the sale proceeds for their intended purpose, he chose to keep "at least 80%" of the sale proceeds for himself and only used some 20% for that specified purpose. He surreptitiously kept the lion's share of the sale proceeds for his personal use. He was not merely opportunistic but plainly dishonest, motivated predominantly by greed and self-interest.

39 In the Appellant's statement to the CPIB dated 29 July 2016, he stated the following:

> I wish to add that I had never informed Christopher Sia on how much monies I had received from the sale of these excess copper cables over all these years. *I know that if I had informed him of the amount I have been receiving for these excess copper cables, Christopher Sia will asked* [sic] *me to return these monies to the company*. [emphasis added in italics]

40 This betrayed the Appellant's guilty mind. It unequivocally demonstrated that the Appellant was keenly aware of his impropriety and was dishonest in retaining the sale proceeds. As to the element of dishonesty, "mere knowledge of a disobedience of direction does not necessarily equate to knowledge of a lack of legal entitlement to do an act; much will depend on the facts and circumstances surrounding the breach of direction" (see *Lam Leng Hung* at [183]). Where what is perceived to be the more advantageous course of action for one's principal is proceeded with, lack of dishonesty would be more readily inferred; the converse is also true.

41 The manner in which the Appellant used the consequential sale proceeds could in no way be said to be more advantageous to RCS, as compared to applying them wholly for the benefit of RCS's employees or for worksite expenses as he ought to have. I am of the view that a finding of dishonesty is thus even more strongly made out.

RCS's position towards the Appellant's actions

42 I note, however, that there remains the issue of what the Appellant deemed as the "factual background" of the matter – that RCS seemingly deemed the wastage as being of no value, and that it never took the position that the Appellant's actions were wrong. As stated above at [23], it was vigorously argued that the DJ had failed to appreciate this factor. In his oral submissions,

counsel took pains to emphasise that the Appellant was merely acting like any enterprising "karang guni" (*ie* "rag-and-bone") man who collects and recycles items like old newspapers or household items which are discarded and deemed to have no value.

43 I disagree with this argument for the simple reason that the DJ was entitled to find that the Appellant had been given specific instructions regarding the disposal of the wastage and the usage of the sale proceeds. Sia was no doubt somewhat trusting in not requiring the use of the sale proceeds to be accounted for, but it is clear that the Appellant dishonestly took advantage of Sia's laxity (and what would appear to be RCS's liberal corporate governance) to advance his own personal interest. In any event, counsel's "karang guni" newspaper collection analogy is not factually apposite. It suffices to say that even for the items that they collect, *eg*. old newspapers, "karang guni" men do ordinarily make some payment, however nominal, to the relevant parties whom they obtain them from – unless the said items are literally left lying discarded so that anyone can help themselves to them should they wish to do so.

44 As for the argument that RCS took no issue with the Appellant's conduct, it bears mentioning that a prosecution is brought in the public interest, pursuant to the prosecutorial discretion of the Attorney-General. The fact that there may not have been any complaints filed by RCS, being the "victim" in this matter, does not change this. I have no doubt that the DJ was correct in finding that the Appellant did knowingly obtain wrongful gain through his conduct.

The appeal against conviction for the CDSA offences

Scope of the CDSA

45 Counsel for the Appellant submitted that s 47(1)(*c*) of the CDSA is

focused on the offence of money laundering, and that it does not capture an accused who merely uses the benefits from criminal conduct – the benefits had to be "concealed" or "disguised". According to counsel, a purposive interpretation of the CDSA would purportedly reveal that s 47(1)(*c*) was to be read in conjunction with s 47(1)(*a*).

46 I am of the view that this argument is fundamentally flawed. On a plain reading, s 47(1)(*c*) is clearly intended to be read as a stand-alone offence with three possible alternative elements of "acquiring", "possessing" or "using" property that represents benefits from criminal conduct. These are alternative facets of money laundering, which is a generic term and not a term of art. The term "money laundering" is also not specifically defined in the CDSA. There is no reason in my view to conflate two separate offence sections.

47 That s 47(1)(*c*) was meant to be a stand-alone offence is confirmed by the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) (Amendment) Bill (Bill 33 of 2007) ("CDSA Bill"). Clause 10(d) amended s 47 of the then CDSA by "deleting the word "Concealing" in the section heading and substituting the words "Acquiring, possessing, using, concealing"". Additionally, the explanatory statement to the CDSA Bill explains that the Bill sought to "amend the [CDSA] … to extend the scope of the money laundering offences under the Act to the acquisition, possession and use of proceeds of crime".

48 The reference to the intent to "extend the scope of the money laundering offences under the Act" is highly instructive. It clearly suggests that concealment is but one way to satisfy the requirements of s 47(1) – it is not the only way. In any case, the Appellant can be said to have concealed the sale proceeds by using them for his various personal expenses. No one except the

Appellant himself would have known he had used them for his personal benefit – certainly not Sia or RCS.

Double jeopardy

49 Counsel for the Appellant claimed that the Respondent had relied on the same facts in establishing both the CDSA and CBT charges, which offends the rule against double jeopardy.

50 The Appellant appears to have conflated the rule against double jeopardy with the rule against double counting. As stated by the Court of Appeal in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [125], "[t]he rule against double jeopardy is that a person cannot be made to face more than one trial for the same offence". In contrast, the rule against double counting provides that while "the same set of facts may establish liability under two or more written laws, there cannot be double punishment for the same offence" (see *Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404 ("*Tan Khee Koon*") at [104]). The Appellant's complaint appears to be premised on the rule against double counting, rather than the rule against double jeopardy.

51 There is little merit in the Appellant's contention. At present, there are two different types of offences at play, as there are both CBT and CDSA offences. The facts engaged by these two types of offences do not overlap. While the CBT charges focus on the Appellant depositing the sale proceeds into his bank accounts, the CDSA charges concern the Appellant's subsequent acts in using the aforementioned sale proceeds. This is hence a far cry from a situation of double counting.

The appeal against sentence

52 While the Appellant's appeal against conviction is unmeritorious, I am of the view that there are grounds for a reduction in the individual and aggregate sentences.

53 As outlined in *Public Prosecutor v Vitria Depsi Wahyuni (alias Fitriah)* [2013] 1 SLR 699 at [19], an appellate court will not ordinarily disturb the sentence imposed by the lower court, except where it is satisfied that:

(a) the sentencing judge erred with respect to the proper factual basis for sentencing;

(b) the trial judge failed to appreciate the materials placed before him;

(c) the sentencing was wrong in principle; and/or

(d) the sentence was manifestly excessive or manifestly inadequate.

54 As noted above at [20], the Appellant's then-counsel did not make any sentencing submissions before the DJ, save to ask that a custodial sentence not be imposed.

Sentences imposed for the CBT offences

55 In considering the appropriate sentence for the CBT offences, the DJ had, pursuant to the Respondent's submissions, placed considerable weight on the decision of *Public Prosecutor v Wan Kam Lan* DAC 920285-2018 and others (11 July 2018) ("*Wan Kam Lan*") (see the decision below at [85]). In *Wan Kam Lan*, the accused had pleaded guilty to a number of charges, including a CBT charge of approximately $125,796.32. She was sentenced to 14 months'

imprisonment for that charge.

56 The DJ reasoned that after applying an appropriate uplift (given that the Appellant was convicted after trial and was thus not entitled to any sentencing discount), the Appellant should be sentenced to 21 months' imprisonment for the 5th Charge ($111,000), 12 months' imprisonment for the 6th Charge ($54,000) and 12 months' imprisonment for the 7th Charge ($49,000). The following table illustrates the punishment imposed by the DJ for the CBT offences:

Charge No	Quantum converted to own use (as stated in the charge)	Original Sentence
5th Charge	$111,000	21 months' imprisonment
6th Charge	$54,000	12 months' imprisonment
7th Charge	$49,000	12 months' imprisonment

57 In reaching his decision, the DJ disregarded the fact that RCS did not deem itself to have suffered loss. As I had noted at the outset, the present case differed somewhat from most other CBT cases. First, not only was RCS not the complainant, it had also purportedly not perceived itself to have suffered tangible loss or damage. In addition, it was open to either RCS's subcontractors or the Appellant to dispose of the wastage. The Appellant was permitted to take it upon himself to handle this task and obtain the sale proceeds, without having

to properly account for their use. This was conceded by the Respondent in the course of oral submissions.

58 Nevertheless, what remains patently clear is that the Appellant was *not* entitled to convert the sale proceeds for his personal enrichment. Regrettably, this was precisely what he did, contravening his principal's direction as to the use of the sale proceeds.

59 As Sundaresh Menon CJ explained in *Gan Chai Bee Anne v Public Prosecutor* [2019] 4 SLR 838 ("*Gan Chai Bee*") at [42], "economic value is a proxy for the degree of criminal benefit received by the offender and the degree of harm caused to the victim, and both are relevant sentencing considerations…" In the present case, RCS had a company policy for sale proceeds to be used for the good of the company (*ie* primarily for the benefit of its workers) *if* wastage was disposed of by the relevant RCS managers, as opposed to by RCS's sub-contractors. Had the Appellant decided to allow for RCS's subcontractors to dispose of the wastage, RCS could arguably be said not to have suffered any loss or harm at all.

60 The quantum that the Appellant converted to his own use cannot serve as a direct and accurate proxy for the degree of harm caused to RCS. Notwithstanding this observation, this has no bearing on the fundamental point that the Appellant was expected to adhere to RCS's policy on the use of the sale proceeds in the first place.

61 RCS appears to have chosen to cast a more forgiving eye upon the Appellant's misfeasance. In my view, this neither absolves him of criminal liability nor does it diminish his culpability. In *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*"), the Court of Appeal noted at [15] that while forgiveness is

a virtue, its role as a mitigating factor in sentencing practice is quite a different matter. Except in exceptional situations, the victim's forgiveness of the offender should not have any effect on the sentence to be imposed on the offender (see *UI* at [67]). Thus, the fact that RCS did not consider itself to have suffered any tangible loss or harm should not serve as a valid mitigating factor. To be clear, this only reflects RCS's questionable corporate governance. Moreover, the fact that RCS has adopted a generous stance is of no assistance to the Appellant when he remains unremorseful and continues to maintain in claiming trial that he had done no wrong.

62 In determining the appropriate sentence, the sentence in *Wan Kam Lan* can be considered as a starting point, especially given the fairly close quanta of $125,796.32 (in *Wan Kam Lan*) and $111,000 (the 5th Charge). However, the factual differences between the cases must be properly highlighted and considered. The accused's conduct in *Wan Kam Lan*, which involved the falsification of the company's records and the issuance of company cheques to herself for personal gain, was more egregious than the Appellant's.

63 There was, however, some restitution by the accused in *Wan Kam Lan*, as well as an early plea of guilt. Restitution reduces the degree of economic harm suffered by the victim and, if timely and voluntary, serves as evidence of the offender's remorse (see *Gan Chai Bee* at [61]–[63]). While there was limited restitution in *Wan Kam Lan* (to the tune of $12,000), there was no restitution at all in the present case. In addition, a plea of guilt is considered as one of many offender-specific mitigating factors (see *Ng Kean Meng Terence v Public Prosecutor* [2017] SGCA 37 at [71]).

64 An uplift from the sentence of 14 months' imprisonment imposed in *Wan Kam Lan* would be justifiable in principle, but I do not agree that 21 months

(a 50% increase) was fair and proportionate on the facts of this case. Correspondingly, for the 6th and 7th CBT Charges which involve amounts far less than that in the 5th Charge, the sentences ought also to be moderated slightly downwards.

65 Having considered the relevant factors, I am of the view that the sentences imposed for the CBT offences should be reduced accordingly:

Charge No	Quantum converted to own use (as stated in the charge)	Original Sentence	Reduced Sentence
5th Charge	$111,000	21 months' imprisonment	18 months' imprisonment
6th Charge	$54,000	12 months' imprisonment	10 months' imprisonment
7th Charge	$49,000	12 months' imprisonment	10 months' imprisonment

Sentences imposed for the CDSA offences

66 In determining the applicable sentences for the CDSA offences, the DJ, having regard to the Respondent's sentencing precedents, noted that the sentence imposed for criminal benefits of up to about $30,000 was around three months' imprisonment, while the sentence imposed for larger amounts above

$30,000 was six months' imprisonment and higher (see the decision below at [86]). However, he also noted that the sentencing precedents presented to him concerned cases where the accused had pleaded guilty. He thus applied an uplift to the sentences imposed on the Appellant:

Charge No	Quantum converted to own use (as stated in the charge)	Original Sentence
8th Charge	$30,000	9 months' imprisonment
9th Charge	$29,000	9 months' imprisonment
10th Charge	$40,000	9 months' imprisonment
11th Charge	$9,000	6 months' imprisonment
12th Charge	$25,300	9 months' imprisonment
13th Charge	$20,000	9 months' imprisonment

67 With respect, these sentences appear to be excessive. It would appear that there was no rational calibration of the sentences for the five charges listed above that involve sums of $20,000 and above. Rather, in a fairly broad-brush fashion, a uniform sentence of nine months' imprisonment was imposed.

68 In determining the appropriate sentence in the present case, apart from

the precedents cited below, reference may also be had to the decision in *Public Prosecutor v Ho Man Yuk* [2017] SGDC 23 ("*Ho Man Yuk*"). There, the trial judge considered a table of precedents submitted by the Prosecution involving "self-laundering" cases concerning offenders who had actual knowledge of the tainted nature of the funds that they were dealing with, and he proceeded to formulate several sentencing ranges. While he did so in the context of s 47(1)(*b*) offences, such offences have been considered as being similar to offences under s 47(1)(*c*) (see *Public Prosecutor v Henry Tan Yeow Seng* [2018] SGDC 311).

69 In *Ho Man Yuk*, in setting out suggested sentencing ranges pegged to the amounts involved for the CDSA offences, the trial judge stated:

> 141 In summary, taking into account the various considerations in this case, including the amounts involved for the present CDSA offences as compared to the relevant precedent cases, the fact that the money involved in the present case was recovered (though not strictly speaking "restituted" – see [129] above), and the fact that no "plead guilty" sentencing discount should operate, I applied the following sentencing ranges which did not significantly deviate from the Prosecution's sentencing range, except that they were lower than that proposed by the Prosecution in certain instances:
>
> (a) For amounts less than $5,000 – 2 weeks' imprisonment;
>
> (b) For amounts from $5,000 to less than $10,000 – 1 months' imprisonment;
>
> (c) For amounts from $10,000 to less than $40,000 – 2 – 4 months' imprisonment; …

70 The decision on both conviction and sentence in *Ho Man Yuk* subsequently came before me on appeal. While I affirmed the trial judge's decision and upheld the sentences imposed (see *Shaikh Farid v Public Prosecutor* [2017] 5 SLR 1081), I did not comment specifically on the appropriateness of the sentencing ranges outlined. For present purposes, I should add that it would be more rational and helpful in formulating a general

guide to ensure that the respective sentencing ranges suggested do not leave gaps in between the respective bands.

71 In the present case, in contrast to *Ho Man Yuk*, the money that the Appellant misappropriated was not recovered. Taking this into consideration, the following broad sentencing bands adapted from *Ho Man Yuk* ought to apply indicatively for the relevant charges in question which involve amounts up to $40,000:

(a) for amounts less than $5,000 – three weeks' imprisonment;

(b) for amounts from $5,000 to less than $10,000 – three weeks' to two months' imprisonment; and

(c) for amounts from $10,000 to less than $40,000 – two to six months' imprisonment.

72 Applying the above sentencing bands to the present charges, the sentences should be reduced as follows:

Charge No	Quantum converted to own use (as stated in the charge)	Original Sentence	Reduced Sentence
8th Charge	$30,000	9 months' imprisonment	5 months' imprisonment
9th Charge	$29,000	9 months' imprisonment	5 months' imprisonment

10th Charge	$40,000	9 months' imprisonment	6 months' imprisonment
11th Charge	$9,000	6 months' imprisonment	2 months' imprisonment
12th Charge	$25,300	9 months' imprisonment	4 months' imprisonment
13th Charge	$20,000	9 months' imprisonment	4 months' imprisonment

Aggregate sentence imposed

73 In summary, I allow the appeal against sentence and impose the following sentences on the Appellant:

Charge No	Quantum converted to own use (as stated in the charge)	Original Sentence	Reduced Sentence
5th Charge	CBT ($111,000)	21 months' imprisonment	**18 months' imprisonment**
6th Charge	CBT ($54,000)	12 months' imprisonment	**10 months' imprisonment**

7th Charge	CBT ($49,000)	12 months' imprisonment	10 months' imprisonment
8th Charge	CDSA ($30,000)	9 months' imprisonment	5 months' imprisonment
9th Charge	CDSA ($29,000)	9 months' imprisonment	5 months' imprisonment
10th Charge	CSDA ($40,000)	9 months' imprisonment	6 months' imprisonment
11th Charge	CDSA ($9,000)	6 months' imprisonment	2 months' imprisonment
12th Charge	CDSA ($25,300)	9 months' imprisonment	**4 months' imprisonment**
13th Charge	CDSA ($20,000)	9 months' imprisonment	4 months' imprisonment

74 While the individual sentences imposed may be appropriate, it is possible that pursuant to s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the individual sentences should be re-calibrated in order to ensure that the aggregate sentence is one that is just and proportionate in the circumstances (per Chao Hick Tin JA in *Lim Seng Soon v Public Prosecutor* [2015] 1 SLR 1195 ("*Lim Seng Soon*") at [40], [43]).

75 Such re-calibration would be required if, for instance, all the CDSA charges had been brought in respect of the same transaction (see *Lim Seng Soon* at [60]). The Appellant argued that the DJ had erred in running three sentences consecutively because the Appellant's act of depositing the sale proceeds into his bank accounts and subsequent use of the monies "are in essence part of the same transaction" (see Appellant's submissions at para 131).

76 As explained above at [51], the CBT and CDSA offences engaged different facts and were separate and distinct offences. They also took place on separate occasions. There is hence no need for re-calibration of the sentences imposed in relation to the individual offences in this case.

77 However, following the reduction of the individual sentences relating to the CBT and CDSA offences, there ought to be a recalibration as to which sentences ought to run consecutively. Tailoring the punishment to fit the crime is a fundamental duty in criminal sentencing, and the court must ensure that "the sentence as a whole is proportionate and adequate in all the circumstances" (*Lim Seng Soon* at [39]).

78 In the proceedings below, the DJ had ordered the sentences in relation to the 5th, 6th and 11th Charges to run consecutively. He imposed a sentence of six months' imprisonment in relation to the 11th Charge only, while a uniform sentence of nine months' imprisonment was imposed for all the other CDSA charges. Given the Appellant's overall criminality and culpability, I find that it would be just and proportionate to order the sentences for the 5th, 6th and 12th Charges to run consecutively. This would amount to an aggregate sentence of 32 months' imprisonment.

Conclusion

79 The appeal against conviction is dismissed but the appeal against sentence is allowed. I shall order the sentences in respect of the 5th, 6th and 12th Charges to run consecutively, resulting in an aggregate sentence of 32 months' imprisonment. The remaining sentences will run concurrently.

See Kee Oon
Judge

Tan Chee Meng, S.C., Paul Loy Chi Syann and Ho Wei Jie, Vincent (WongPartnership LLP) for the Appellant;
Jasmin Kaur and Sarah Thaker (Attorney-General's Chambers) for the Respondent.