

The Court of Appeal decision concerning Joshua Wong, Alex Chow and Nathan Law: A Factual Account

On 17 August, the Court of Appeal delivered its Judgment (“Judgment”) concerning the application to review the sentences involving Joshua Wong, Alex Chow and Nathan Law (“the Defendants”). The Court of Appeal sentenced the Defendants to immediate custodial sentence of 6 to 8 months. The Judgment has attracted extensive attention and discussions. Since the Defendants have indicated an intention to appeal against the Judgment, it is not appropriate to go into matters which may affect the intended appeal. However, since some of the comments display a lack of understanding of the basic facts of the case or our legal system, it is important that there should be an explanation of the different stages of the legal and judicial process.

The first stage is the prosecution stage. The Defendants were prosecuted for offences involving unlawful assembly, which is defined in section 18(1) of the Public Order Ordinance as follows: “When 3 or more persons, assembled together, conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such conduct provoke other persons to commit a breach of the peace, they are an unlawful assembly”. Unlawful assembly is not concerned with the ideas (whether political or otherwise) that the persons who organized or participated in the assembly sought to advocate. Rather, it focuses on whether the conduct of the people during the assembly was unlawful. Accordingly, the Defendants were not prosecuted for their political ideas.

The second stage is the trial stage. There can be no doubt that the Defendants were convicted after a fair and open trial. The Defendants were legally represented, and they had every opportunity to make such submissions as they saw fit. The Defendants at one stage lodged appeals against their convictions. However, they subsequently abandoned their appeals. Thus, the Defendants no longer take issue with their convictions.

The third stage is the review of sentence. The first review took place before the magistrate who convicted the Defendants pursuant to section 104 of the Magistrates Ordinance. The second review took place before the Court of Appeal pursuant to section 81A of the Criminal Procedure Ordinance. Such review can only be lodged if the sentence imposed by the trial judge “is not authorized by law, is wrong in principle or is manifestly excessive or manifestly inadequate”. All these grounds for review only concern legal issues. Political considerations do not come into play, whether at the stage when the prosecution sought the review or when the Court of Appeal dealt with the application for review.

The hearing of the review was also an open and transparent one. All the submissions made by the prosecution were legal (as opposed to political) submissions. The Defendants again were legally represented, and they had every opportunity to advance such submissions as they saw fit. If one reads the Judgment (in particular, the leading judgment by Poon JA), the reasons leading to the conclusion that imprisonment is appropriate are legal reasons and not political reasons. Further, as is made crystal clear in paragraph 171 of the Judgment, the Defendants were convicted and sentenced not because they exercised their right of assembly, demonstration or freedom of speech; they were convicted and sentenced because they had overstepped the line allowed by the law and that they had committed serious unlawful act.

Hong Kong all along upholds judicial independence. The Hong Kong Judiciary is well-known for their independence and their top quality. It is regrettable that some of the comments (including some made by overseas media) sought to attack our Judiciary. As I have repeatedly said in the past, the public has a right to discuss judicial decisions, but no discussion should seek to undermine the integrity or impartiality of the Judiciary. As observed in an Australian decision: *“The authority of the law rests on public confidence, and it is important for the stability of society that the confidence of the public should not be shaken by baseless attacks on the integrity or impartiality of courts or judges.”* (*Gallagher v Durack* (1983) 152 CLR 238, at 243).

Some have queried the timing of the review applications, and alleged that there was ulterior motive behind them. The timing of the

review applications before the magistrate and the Court of Appeal were regulated by the relevant statutes. In the present case, the prosecution lodged the review applications within the relevant time prescribed by the statutes. The only reason why it took almost a year for the Court of Appeal to hear the review application is because the Court of Appeal could not deal with the review of sentence until after the Defendants' appeals against conviction were disposed of (see section 81C(1) of the Criminal Procedure Ordinance). The Defendants' appeals against conviction were scheduled to be heard on 22 May 2017. It was only after the Defendants abandoned their appeal against conviction on 19 April 2017 that the prosecution could proceed to fix a date for the hearing of the review of sentence, which eventually took place on 9 August 2017. In other words, the timing of these steps is not within the control of the prosecution, and any suggestion of ulterior motive on the part of the prosecution is simply groundless.

The law in Hong Kong protects people's fundamental rights including the right to assembly, demonstration and freedom of speech. However, any exercise of such rights should be in a lawful manner (see para. 110-112 of the Judgment). From the commencement of the prosecution up to the review of sentence by the Court of Appeal, the Defendants were dealt with strictly in accordance with the law. The Defendants were convicted and sentenced for their unlawful conduct, not for their political ideas. With these explanations, I hope the public and the international community will continue to respect our independent Judiciary and refrain from making baseless attacks.

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Secretary for Justice