

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGMC 85

Magistrate's Court – MAC 910583/2017 and others  
Magistrate's Appeal Nos. 9311/2018/01 and 9311/2018/02

Public Prosecutor

*Against*

Low Ji Qing

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**FOUNDATIONS OF DECISION**

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**Public Prosecutor**

**V**

**Low Ji Qing**

**[2018] SGMC 85**

Magistrate's Court – MAC 910583/2017 and others

25 October, 1 November 2018

**24 December 2018**

**District Judge Eddy Tham:**

The Accused pleaded guilty before me to two charges of theft under section 379 of the Penal Code with one similar charge of theft taken into consideration for the purpose of sentencing.

2 I sentenced the Accused on the charge MAC 908030/2017 to 4 months' imprisonment and on the charge MAC 910583/2017 to 6 months' imprisonment. I further ordered both sentences to run consecutively giving a total of 10 months' imprisonment.

3 The Prosecution being dissatisfied with the sentence has appealed against it. The Accused was also dissatisfied with the sentence and has filed

a cross-appeal against sentence. The Accused is currently out on bail pending the hearing of the appeals.

4 I now set out my grounds of decision for the sentence.

*The Statement of Facts*

*Facts relating to the 2<sup>nd</sup> charge MAC 910583/2017*

5 The Accused is one Low Ji Qing, male, 54 years old. Investigations revealed that on 17 October 2017 at about 1.30 pm, whilst at the toys' section of Takashimaya Shopping Centre, the Accused had loitered near the victim and her pram. When the victim was distracted, the Accused immediately moved in to take the victim's wallet from her pram. He then hid the wallet in his pants' pocket and moved towards an adjacent shelf. He loitered around until security officers arrived to confront him about the theft.

6 The Accused put up a struggle when confronted by the security officers. He only surrendered the victim's wallet when police officers arrived at the scene. The victim's wallet was a pink Furla wallet, valued at S\$200.00, containing:

- a) Three Dependent Passes;
- b) One Japanese Bank Visa Card;
- c) One DBS Visa Card; and
- d) Cash of S\$437.95

with a total value of S\$637.95. All of the above items were recovered when the Accused surrendered the victim's wallet to the police.

7 By taking the above items out of the victim's possession, with the dishonest intention to commit theft, the Accused has committed an offence under section 379 of the Penal Code.

8 The above offence was committed while investigations were ongoing in relation to a separate offence of theft, i.e. MAC-904720/2017 (the charge taken into consideration).

*Facts relating to the 3<sup>rd</sup> charge MAC-908030/2018*

9 The witness is Son En Yee, female, 24 years old. At the material time, she was employed as a sales assistant at Don Don Donki at 181 Orchard Road, #B2-00, Orchard Central, Singapore ("the store").

10 The victim is an unknown female person. She was shopping at the store and was pushing a baby pram at the material time.

11 On 17 August 2018 at 3.38 pm, the witness lodged a police report at Orchard Neighbourhood Police Centre that she spotted a male person taking a wallet from a shopper's bag on 25 July 2018 at about 4.20 pm.

12 Investigations revealed that on 25 July 2018 at about 4.20 pm, the witness saw the Accused closely following a baby pram that was being pushed by the victim. The victim's bag was hanging from the pram. When the victim was distracted, the Accused removed a wallet from the victim's bag.

13 When the Accused noticed that he was being watched, he went to the cashier counter and handed the wallet to the cashier before leaving the store. The incident was captured on CCTV footage of the store.

14 Shortly after, the victim realised that her wallet was missing from her bag and found that it had been handed over to the cashier counter. She checked her wallet and found that nothing was missing. She then left the store. As the identity of the victim was not established, the amount of cash and the value of the items in her wallet remained unknown.

15 The Accused was subsequently arrested by the police on 18 August 2018.

16 By taking the wallet out of the victim's possession with the dishonest intent to commit theft, the Accused has thereby committed an offence punishable under section 379 of the Penal Code.

17 The above offence was committed while the Accused was on court bail for two offences of theft, i.e. MAC 904720/2017 and MAC 910583/2017.

*Antecedent records*

18 The Accused has a record of multiple theft offences with the first conviction dating back to 1985. Since then he had appeared in court on 11

occasions all the way to 30 December 2014. On the last occasion he was sentenced to a total of 3 years' imprisonment. The longest imprisonment term he received was in 2000 where he was sentenced to 10 years' preventive detention.

19 Another significant event was in 2011, he was placed on 36 months' probation. He breached probation by reoffending in 2012 but probation was allowed to continue. However, he failed to complete his probation as he re-offended yet again in 2013, where he was sentenced to a few weeks of imprisonment.

*Prosecution's submissions*

20 The Prosecution sought for the Accused to be sentenced to a global sentence of 2 years' imprisonment. They submitted that whilst the Accused was diagnosed with fetishism in 2018, there was no substantive link to the offending behaviour. They referred to the report from the Institute of Mental Health ("IMH") dated 9 April 2018 by Dr Yeo Chen Kuan Derrick. Dr Yeo had opined at paragraph 18 of the report that whilst the Accused was suffering from fetishism, a form of abnormal sexual preference in which he has recurrent sexual urges involving female owners' wallets, it had no substantive contributory link to the index offence. This was because the Accused's cognitive functioning and his volitional/emotional capability to break the law in order to act on his sexual desires were not significantly impaired. Dr Yeo concluded that the Accused's "tendency to opportunistically steal the female wallet, with the secondary purpose of using it for his fetishism, is likely a maladaptive style of coping with stress in his life".

21 They also highlighted the fact that in 2014 the Accused had also returned a wallet after stealing a wallet did not stop the court from still imposing a term of one year's imprisonment. That conviction as listed as at no. 86 in the records of his previous conviction submitted by prosecution.

22 Finally, the prosecution submitted that the Accused would be able to receive treatment and undergo rehabilitation whilst in prison. They tendered an email from Prisons dated 18 October 2018 stating the kind of psychiatric treatment and programme that can be given for the Accused who had been diagnosed with fetishism with secondary diagnosis of adjustment disorder with depressed mood. The Prosecution thus argued that rehabilitation can take place within Prisons and hence a sentence of imprisonment would not prevent the Accused from receiving the help that he needs.

*The Defence submissions*

23 The Defence Counsel ("DC") submitted that the Accused had committed the offences of theft not out of monetary gain but due to fetishism as evidenced by the fact that the stolen items were female wallets. As a result of this mental condition, the Accused committed such offences on multiple occasions over the years and had served many bouts of imprisonment including a 10-year preventive detention sentence. The Accused would target attractive looking victims, steal their wallets, fantasize about having sex with the owners and masturbate before discarding the wallets. Occasionally he would also use the monies in the wallets. This history of the past offending has been set out at paragraph 10 of the IMH report dated 12 October 2017 by Dr Christopher Cheok Cheng Soon.

24 The DC then highlighted that there has been a de-escalation in the offending behaviour of the Accused. For the charge taken into consideration, the Accused returned the wallet to the information counter after smelling it. The offence was committed on 11 May 2017. He committed the offence during a time when he had lost his job and was unemployed. He was thus feeling stressed and depressed.

25 The Accused then committed the offence in MAC 910583/2017 on 15 October 2017. On this occasion, he committed the offence opportunistically. Thereafter he did not leave the scene but remained there for a few minutes, feeling guilty over his action. When he decided to return the wallet, he walked towards the information counter but was accosted by the security guard on his way there.

26 Finally, in relation to the third offence in MAC-908030/2018 which he committed on 25 July 2018, the DC submitted that the Accused had changed his mind after stealing the wallet. He had returned the wallet to the information counter even before the victim discovered her loss. Hence no police report was ever made by the victim. The offence was only investigated when a witness filed a report more than 3 weeks after the incident.

27 Accordingly, the DC submitted that in the light of the de-escalation in the offending behaviour and the absence of any loss, the court should simply impose a sentence that is higher than the previous sentences. To do that would be to punish the Accused again for past offences for which he has already been duly punished. Instead the Court should apply the principle of proportionality in this case.



28 The DC also emphasized the mental condition of the Accused and the efforts he had put in. The DC referred to the IMH Report of 20 June 2018 where Dr Cheok had stated at paragraph 2 that the Accused had

“attended 20 sessions at roughly fortnightly intervals with myself and 10 sessions with our psychologist Shawn Ee. His treatment consists of psychotherapy and mindfulness practice ... It is recommended that he continues with his treatment on a long term basis to reduce the risk of reoffending”.

29 The DC drew analogy from kleptomania, stating that “it is also concerned with a compulsive urge to steal, accompanied by an increasing sense of tension before, and a palpable sense of relief immediately after and during the act”. The DC thus argued that the principle of deterrence would not be applicable for such offenders and instead the principle of rehabilitation should take centre stage.

30 The DC thus submitted that taking into account the mental condition of the Accused, his progress made whilst undergoing rehabilitation and treatment, the absence of any loss to victims and the fact that the Accused has been gainfully employed since July 2017 and now holding a full-time managerial position, any incarceration period to be imposed should be short. This will allow the Accused to resume his treatment regime upon his release, and continue to contribute usefully towards his kin and society.

### *The Principles of Sentencing*

31 In general, the offence of theft being a property offence and typically motivated by greed and a desire for unlawful gain, the applicable principle of

sentencing ought to be that of deterrence, both general and specific. The greater the value of the item stolen, the more severe the sentence.

32 For an offence of theft under section 379 of the Penal Code, as the prescribed punishment may be a fine or jail or both, the general starting point would be that of a fine, where the fine amount should be significantly higher than the value of the item stolen.

33 However, in the case of an offender who had been previously punished for theft or other property related offences, the principle of specific deterrence would come into play. Given that an offender had not learned from his previous punishment and was not deterred from re-offending, there ought to be an uplift in the sentence to be meted out so as to send a sufficiently strong message to the offender to mend his ways.

34 In the present case, the Accused suffers from fetishism causing him to have an abnormal sexual urge to smell ladies' wallets and to fantasize about the owner of the wallets culminating in masturbation and a sense of euphoria. However, this is not the same as an impulse control disorder like kleptomania. Dr Yeo confirmed that the Accused, whilst diagnosed with fetishism over ladies' wallets, still maintained cognitive control and awareness over the wrongfulness of his actions and his act of theft was likely to be arising from a maladaptive way of dealing with his stress. Dr Yeo's conclusion that there was no substantive contributing link between the Accused's fetishism and his theft behaviour has not been challenged by the Defence. Accordingly, in my view the principle of deterrence is still a relevant sentencing principle here, both specific and general.

35 I have also noted that the Accused had been given a chance for a more rehabilitative approach. He had 2 chances at probation in 2011 and 2012. Unfortunately, the Accused on both occasions had failed to complete his period of probation successfully without reoffending. The Accused was nonetheless given a short custodial sentences of a few weeks' imprisonment when he reoffended in 2013 during probation despite having much longer sentences of imprisonment prior to being placed on probation. Sadly, the Accused re-offended yet again in 2014 and on that occasion he received a very substantial imprisonment term of 3 years.

36 Thus, a custodial sentence of substantial length ought to be imposed. The global sentence of 2 years' imprisonment sought by prosecution appears to be based on the fact that for the most recent conviction on 30 December 2014, the Accused was sentenced to one 2-year imprisonment term and two 1-year imprisonment terms with a global sentence of 3 years' imprisonment. There would be a reduction of one year's imprisonment but that could be explained by the fact that prosecution had proceeded with 3 charges in that previous conviction with one more charge taken into consideration.

37 However, in the present case, I found that the Accused does deserve some leniency. Whilst he may have failed to stop himself from giving in to his urges, I am satisfied that he had put in serious effort to overcome his underlying issue. He has been attending regularly sessions with his psychiatrist since the commission of the first offence in 2017. While he had again re-offended whilst undergoing therapy in relation by committing another offence in 2018, he had shown some remorse in returning the wallet. I have noted that in the Statement of Facts, he had also admitted that he had noticed that he was being watched before going to the cashier's counter to return the wallet. However, it did not mean that he was also not

feeling regretful over his action at the same time. Hence, I would accept that he did feel conflicted moments after commission of the acts each time. At the end of the day, no loss has been caused to any of the victims.

38 The Accused had paid a very high price in the past for his indulgence in succumbing to his abnormal urges for female wallets. He had served a 10-year preventive detention and a 3-year sentence for his last offence in 2014, not counting other periods of shorter imprisonment terms. Those were wasted years as he has shown himself to be capable of living a useful and productive life. As set out in the mitigation plea at paragraph 21, he managed to find a job in July 2017 and rose to become a restaurant manager within a short period, earning a decent monthly salary of \$3,000.

39 This is clearly a case for which it is not warranted that the sentence be pegged at the last sentence. Applying the principle of proportionality to the facts of the case where no loss has been caused to the victims and taking into account the efforts he had put in to address his underlying issue, I was of the view that a much shorter term of imprisonment should be imposed in comparison to his last sentence of 3 years' imprisonment.

40 However, it cannot be so short that there is no deterrent effect. The Accused must realise that there is a consequence to his action. It should be substantially long enough for him to receive that message but not so long as to be crushing.

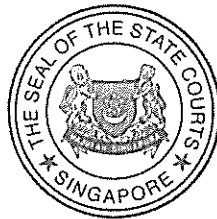
41 I have accordingly calibrated the first sentence to be 6 months' imprisonment and the second sentence a shorter one to reflect the fact that he did return the wallet before he was actually confronted as an encouragement to him that

if he continued to put in the necessary effort, he will be able to curb and manage his urges to the extent that he does not commit the offence in the first place instead of merely feeling regret later.

42 I have nonetheless ordered both sentences to run consecutively given that he committed both offences whilst he was on bail. This is to send the message that his culpability is increased when committing an offence so audaciously, without any regard for the consequences of his action despite having been already charged in court.



Eddy Tham  
District Judge



*Deputy Public Prosecutor Ms Grace Teo Pei Rong* for the prosecution;

*Defence Counsel Chooi Jing Yen (M/s Eugene Thuraisingam LLP)* for the Accused

