

Singapore High Court Reduces Sentence in COVID-19 Vaccination Cheating Offence

In *Newton, David Christopher v Public Prosecutor* [2023] SGHC 266, a case involving the appellant's attempt to deceive about his vaccination status, the General Division of the High Court of Singapore (**High Court**) reduced the appellant's sentence on the grounds that the lower court had failed to appreciate that the harm occasioned by his offence and the culpability attributable to him were both "*on the low side*".

The Honourable the Chief Justice Sundaresh Menon, sitting in the High Court, also issued guidance to judges against excessive reproduction of a party's submissions as part of the court's judgment given that it is crucial not only to ensure that justice is done but also that it is manifestly seen to be done.

Our Paul Loy and Adelle Yii successfully represented the appellant before the High Court.

Our Comments

The High Court's decision is notable as it outlines the approach that the courts will adopt in sentencing for *non-pecuniary* cheating offences, where the circumstances of the case are such that the assessment of harm caused and offender's culpability cannot readily be benchmarked against the usual yardsticks of financial (i.e. *pecuniary*) harm or benefit. The majority of cheating cases involve financial loss or gain. In this case, given that the benefit sought by the offender was predominantly non-financial, the High Court had to carefully analyse the material facts to properly assess the levels of harm and culpability involved, as these twin aspects remained fundamental considerations for the purpose of sentencing.

Following from this, the High Court's decision provides considerable guidance as to how relevant circumstances surrounding the offending conduct should (or should not) be taken into account by the sentencing courts. In particular, the High Court held that, while the offender's motive behind committing the offence might generally be an important consideration for determining his level of culpability for sentencing purposes, this ought not to be overstated and is not a blanket rule; the court should also have regard to the nature of the offence committed. The High Court agreed with the submission of the appellant's lawyers that it is often *inherent* in a matter involving cheating that the offender is motivated by some form of personal benefit, whether financial or otherwise. In such cases, it would not be meaningful for the sentencing court to ascribe separate weight to the offender's motivations for committing the offence (and therefore impose a heavier punishment).

The High Court's decision is also a timely reminder of the importance of proper judicial consideration. In line with other recent cases, the High Court reiterated that an excessive or extensive reproduction of the submissions of one party by the court is generally unsatisfactory, as it opens the court to allegations of actual or apparent bias. The exercise of proper judicial consideration satisfies the parties involved (as well as the onlooking public) that all sides have been given a fair hearing, and this in turn promotes and maintains confidence in the justice system. Hence, the oft-cited aphorism that justice must not only be done, but must also be seen to be done.

This update takes a look at the High Court's decision.

Background

The appellant, Mr Newton David Christopher (**Mr Newton**), an Australian national, paid \$6,000 to a general medical practitioner, Dr Jipson Quah (**Dr Quah**) and the clinic's logistics supervisor, Thomas Chua (**Mr Chua**), to falsify COVID-19 vaccination records for him and his wife, Ms Wonglangka Apinya (**Ms Apinya**) who had a medical condition but was unable to be medically exempted for COVID-19 vaccinations under the prevailing health rules. Mr Newton had been offered a job in Australia and faced difficulty entering the country if he and Ms Apinya were unvaccinated.

Mr Newton contacted Mr Chua, who arranged for Dr Quah to ostensibly vaccinate Mr Newton and Ms Apinya. Dr Quah injected Mr Newton and Ms Apinya with saline solution on two occasions before falsely reporting to the National Immunisation Registry (**NIR**) that the couple had received two doses of the Sinopharm vaccine.

Mr Newton was charged with two offences under section 417 read with section 120B of the Penal Code, namely, that: (a) he had conspired with Dr Quah and Mr Chua to cheat the Health Promotion Board (**HPB**) into reflecting in the NIR that he had been fully vaccinated against COVID-19 when he was not (**First Charge**); and (b) he had conspired with Dr Quah and Mr Chua to cheat the HPB into reflecting in the NIR that Ms Apinya had been fully vaccinated against COVID-19 when she was not (**Second Charge**).

Mr Newton pleaded guilty to the First Charge. By consent, the Second Charge was taken into consideration.

In sentencing Mr Newton to 16 weeks' imprisonment, the District Judge stated that the public interest called for a deterrent sentence and the offence involved various aggravating factors, including a degree of sophistication on Mr Newton's part. He rejected as mitigation the fact that Mr Newton did not cause the HPB pecuniary loss, that he intended to leave Australia in March 2022, and that he had offended out of concern for Ms Apinya. In his grounds of decision (**GD**), the District Judge specified several aggravating factors which pointed to a "substantial imprisonment term", including Mr Newton's active participation in the criminal conspiracy, his selfish reasons for committing the offence, and the difficulty in detecting the offence. The District Judge's grounds of decision were largely reproduced from the Prosecution's two sets of sentencing submissions, the latter of which was filed by the Prosecution just two days before the hearing.

Mr Newton appealed against the sentence, contending (among other things) that the sentence was manifestly excessive because the District Judge placed excessive weight on certain aggravating factors and failed to attribute due weight to various mitigating factors.

The High Court's Decision

The High Court allowed Mr Newton's appeal and reduced the sentence of 16 weeks' imprisonment to 12 weeks' imprisonment.

"Manifestly excessive" sentence reduced

Noting that the incidence or likely incidence of harm as a result of a deception is an element of the offence of cheating, the High Court pointed out that the type of harm allegedly suffered by the victim, the HPB (namely, potential reputational harm resulting from the vaccination records it maintained being inaccurate for a short period of time) was not the same as harm such as the loss of money or property that typifies the

usual case of cheating. It was therefore essential that the court carefully examine and assess the *nature* of harm occasioned by the offender to properly appreciate the severity of the offence.

Given the dearth of comparable cases and because the facts of the present case did not fall within any of the sentencing frameworks laid down for certain types of offence under section 417 of the Penal Code, the High Court took the view that the propriety of the sentence imposed on Mr Newton should be assessed by reference to: (a) the maximum punishment of three years' imprisonment carried by the First Charge; (b) the harm occasioned by the offence and the accused's culpability; and (c) any other aggravating or mitigating factors.

The High Court accepted that harm for the purpose of assessing the appropriate sentence might be broader than the type of harm that was sufficient to constitute the offence, and the public disquiet arising from Mr Newton's offence and the fact that the victim was a public agency could be viewed as factors going towards the assessment of harm, not culpability.

However, the High Court held that the harm caused by Mr Newton did not rise above the higher end of "low". The risk of the potential harm to the HPB's reputation materialising was low. As regards the public disquiet over the incident, the High Court was of the view that the facts of the case pointed instead towards the public having quite quickly realised that the safeguards in place were robust and that the HPB's systems had quickly exposed the attempted deception.

It also held that Mr Newton's culpability fell in the middle range of "low". The blame for any sophistication associated with the conspiracy could not be attributed to Mr Newton and the scheme was uncovered quickly. Offences including cheating were usually for selfish motives (i.e., self-benefit), and Mr Newton's selfish motivations were not a meaningful consideration in assessing his culpability in the context of the First Charge. The fact the offence was premeditated and that Mr Newton had cheated his wife were not so significant as to elevate Mr Newton's culpability to a moderate or high level.

The High Court referred to the harm-culpability matrix set out in *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 (*De Beers*) (at [40]) to obtain a sense of the appropriate indicative starting sentence in the present case. While the High Court emphasised that it did not purport to lay down a sentencing framework for cases of cheating under section 417 of the Penal Code involving non-pecuniary loss, much less for all forms of cheating thereunder, it considered the broad analytical approach adopted in *De Beers* in determining how it should calibrate the sentence.

The High Court noted that an offence disclosing harm and culpability in the high and middle range of "low" respectively would attract an indicative starting sentence after trial of around three months or approximately 12 weeks' imprisonment. It further opined that no adjustments to the starting point were needed. This balanced three factors which pulled in opposing directions, namely:

- (a) The public interest in general deterrence.
- (b) The Second Charge taken into consideration in sentencing -- some weight was accorded to the fact that Mr Newton had conspired with Dr Quah and Mr Chua to have Ms Apinya injected with saline without her knowledge or consent. In doing so, Mr Newton had violated Ms Apinya's bodily autonomy and also perpetrated a distinct fraud on the HPB.

- (c) Mr Newton's plea of guilty reflected genuine remorse and contrition. In addition, he completed his sentence before his appeal was dealt with.

In the circumstances, the High Court held that the 16-week sentence for the First Charge imposed by the District Judge was manifestly excessive and substituted it with a sentence of 12 weeks' imprisonment.

Justice must not only be done but also manifestly seen to be done

At the hearing below, it was apparent that the District Judge had already prepared his GD before the parties made their oral submissions. In addition, most of the GD reproduced "*substantial portions*" of the Prosecution's written submissions, including footnotes and stylistic emphases. This extended to the copying of the cross-references in the Prosecution's written submissions even where those references were out of place when set out in the GD.

The High Court noted the District Judge's conduct was wholly unsatisfactory as a matter of judicial practice. This was compounded by the fact that the District Judge went to the hearing apparently intending to pronounce the sentence he intended to impose without – as was the norm – hearing oral submissions by the parties.

That said, the High Court was inclined on the whole to accept that the District Judge's conduct was not sufficient to meet the threshold of apparent bias. The District Judge did accede to the request by Mr Newton's lawyers to orally address some of the points raised in the Prosecution's reply written submissions. The oral exchange showed that the District Judge had read and digested the case materials, considered the merits of the parties' respective submissions, and come to a view on the matter. There was also nothing to suggest that, in doing so, the District Judge had not applied an independent judicial mind to bear on the materials and the dispute before him.

In closing, the High Court reiterated the undesirability of judges reproducing a party's submissions as part of the judgment of the court, and expected this guidance to serve as a reminder of the need for all who take the judicial oath of office to be mindful of the importance, not only of always ensuring that justice is done, but also that it is manifestly seen to be done.

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