

FOO SOO HOON

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 7 of 2014)**

CHUA IN ZING

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2014)**

Before: Mortimer P, Davies and Burrell JJ A.
21st May, 2014.

Forged credit card offences – International organized crime – Serious prevalent cross border offences requiring deterrent sentences – 9 years after plea upheld for man in controlling role on 3rd expedition within a month – Sentence at top of proper range.

Appellant in person
DPP Haji Mohd Abd Raafe' Hj Ibrahim of Public Prosecutor for Respondent

Case cited

Yap Kean Huat v Public Prosecutor (Criminal Motion No 47 of 2013)

Mortimer. P:

On 28th of December 2013 the 2 appellants, together with a 3rd person, pleaded guilty to numerous offences concerning forged credit cards in front of Intermediate Judge Pg Hanani. The 2nd applicant, Chua In Zing (Chua), was sentenced to a total of 9 years imprisonment and the 1st applicant, Foo Soo Hoon (Foo), was sentenced to a total of 3 years and 6 months imprisonment.

Each appeals the sentence imposed upon him.

Chua pleaded guilty to 14 offences of conspiracy to possess forged credit cards intending to use them as genuine contrary to sections 474, 467 and 120 B of the Penal Code. He asked for 30 similar offences in the same series to be taken into consideration. For these offences he received 7 years imprisonment reduced to 4 years 8 months with an additional 20 months for the 30 offences taken into consideration making 6 years and 4 months concurrent on all. He also

pleaded guilty to 14 charges of cheating by using some of the cards and for each of these offences he received concurrent sentences of 4 years imprisonment reduced to 2 years 8 months. The two concurrent sentences were ordered to be served consecutively making 9 years in all.

Foo pleaded guilty to 7 offences of conspiracy to possess forged credit cards with intent to use them and he asked for 14 similar offences taken into consideration. He was sentenced to 5 years imprisonment reduced to 3 years concurrent on each of the charges but to an additional 6 months imprisonment for the offences taken into consideration, making 3 years and 6 months in all.

The facts

These offences followed an all too familiar pattern. The appellants were recruited by an organised criminal syndicate abroad and were given the forged credit cards to fly into Brunei from Kuala Lumpur to make the fraudulent purchases of high-value easily disposable goods in return for a small commission. The plan was to make the purchases and return abroad quickly before being apprehended.

These offenders are the foot soldiers of the organisation. They use the cards and are often the only ones to be apprehended and brought to justice. Foo fell into this category although he was arrested before he had the opportunity to use the cards.

On the other hand, as the judge recognised, Chua's role was greater than that of the usual foot soldier. He recruited others, brought them to Brunei, controlled the purchases to be made, took possession of the goods and handed out commission. He made 3 such criminal expeditions to Brunei within the month of August; the first was on 5 August 2013, the second on 21 August and only on the third on 31 August was he detained.

Chua pleaded guilty to offences on each occasion. These included fraudulent purchases totalling over B\$10,000 on the first two. A man called Andy took the leading role in Brunei on the first occasion.

Chua was answerable to Andy and a man known as 'uncle' who remained in Malaysia but on the last two occasions he was heavily involved in controlling activities in Brunei.

By the 3rd occasion Chua was on an immigration 'stop list' and both he and Foo were arrested on arrival at the airport before they were able to use the many forged cards they brought with them.

The judge described Chua as a 'mastermind.' This is an exaggeration of his role which nevertheless was central to this part of the enterprise. He controlled the visits to Brunei and the fraudulent purchases.

Foo's involvement was less. He only came to Brunei on the last trip on 31 August. It appears that he was brought into Brunei at the request of "uncle". He was handed 21 forged cards and was part of the conspiracy to use them but he was arrested at the airport before he had the opportunity to make any fraudulent purchase.

Chua's appeal

Chua is 42 years of age, is married and has no convictions in Brunei. In support of his appeal he contends that his sentence is manifestly excessive in all the circumstances.

However, the only substantial point which he can make is that having regard to his early pleas of guilt to the multiple offences a lengthy and costly trial was avoided and that in these circumstances his total sentence of 9 years is manifestly excessive.

Undoubtedly 9 years is a very heavy sentence after plea and we must carefully consider whether in all the circumstances of the offences and the offender it is wrong in principle or excessive.

As we have noted before these offences have becoming increasingly prevalent and are extremely serious. The offences are planned by organised syndicates abroad and committed by foot soldiers on cross-border raids who are often able to escape back before being apprehended. The enormous planning, preparation, control, capital and organisation involved in such crime is obvious.

Heavy deterrent sentences are required. This is one of the few ways of attempting to reduce the frequency of the offences.

Chua's sentence of 9 years involves a starting point after trial for the whole criminality involved of 13 years and 6 months imprisonment.

Although we doubt the judge's description of this appellant as a '*mastermind*' he had a substantial role. If a mastermind of such a huge international organised crime syndicate were convicted a starting point for sentence after trial would be well in excess of 13 years and 6 months. As it is we are of the opinion that although this starting point is at the high end of the proper range neither it, nor the sentence of 9 years after plea, is either manifestly excessive or contrary to principle. It is necessarily a heavy sentence.

For these reasons Chua's appeal is dismissed.

Foo's Appeal

Foo is 65 years of age and also has no previous convictions in Brunei. It is certainly an advanced age for a person to commit his first offences.

He contends that for a man of his age, without any previous conviction, who was arrested before he was able to make any fraudulent purchase, and who played a relatively minor role under the control of Chua, his sentence is excessive.

Nevertheless, for reasons best known to himself he involved himself in serious cross-border organised crime for which a deterrent sentence is necessary. Again this sentence is appropriate in all the circumstances of the offence and the offender. It is certainly not manifestly excessive. His arrest prevented him from committing the number offences

similar cross-border offenders usually commit following which a 6 year sentence after plea is often passed and approved by this court. *See Yap Kean Huat v Public Prosecutor (Criminal Motion No 47 of 2013)*

For these reasons Foo's appeal is dismissed.

Orders:

1. Chua's appeal against sentence is dismissed.
2. Foo's appeal against sentence is dismissed.

General

We wish to say at the outset that the sentences for the individual offences charged were careful, detailed and entirely correct. The Judge stated her starting point and made appropriate and meticulous discounts of one 3rd for the pleas of guilty.

Nevertheless, before we leave the case we need to say a few words about the judge's approach to sentencing in two respects.

Sentencing for Offences Taken into Consideration

The first is her approach to sentencing offences which she took into consideration. These were similar offences in the same series as those charged. Simply imposing a general increase to the concurrent sentences already passed for similar offences in the same series is incomplete. The power to take offences into consideration is granted in section 13A (1) of the Criminal Procedure Code. Subsection (2) deals with the procedure to be adopted:

(2) In exercising the jurisdiction conferred by subsection (1) the Court shall record convictions in respect of such offences as such accused person admitsand proceed to sentence thereon:

The judge is therefore required to pass sentences upon each of the offences taken into consideration. One way of achieving her intention having regard to the number of offences both charged and taken into consideration all in the same series would have been to pass a concurrent sentence of 6 years and 4 months on each. Provided that the judge passes clear sentences on each offence taken into consideration the desired result can be achieved in many different ways but preferably not by passing a series of short sentences and making them consecutive.

Totality when Sentencing for Multiple Offences

The second matter concerns the totality principal when sentencing for multiple offences. When appropriate sentences have been determined for the individual offences it is necessary for the judge to metaphorically stand back, consider all the offences generally and the whole criminality involved, then determine the appropriate total sentence after trial to properly reflect that criminality. The judge then allows the 1/3 reduction for early pleas. As we have said on previous occasions this is good practice. The reason is that if it is not undertaken there is a serious risk that, inadvertently, the judge may deprive the

convicted person of the benefit of a reduction for pleas of guilt. Experience in this court confirms this risk.

Mortimer, P.

Davies, J.A.

Burrell, J.A.