

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , M. Twomey (JA) B. Renaud (JA)

Criminal Appeal CR SCA 24-27/2016 Arising in Criminal Side No. CO 21/2016

Hu Dejin	1st Appellant
Hu Dehua	2nd Appellant
Hu Ruiping	3rd Appellant
Shishui Zhong	4th Appellant

Versus

The Republic

Heard: 28 November 2017
Counsel: Mr. Nichol Gabriel for Appellants
Mr Ananth Subramanian for Respondent
Delivered: 07 December 2017

JUDGMENT

M. Twomey (J.A)

1. The four Appellants are Chinese nationals who entered Seychelles in March 2016 as visitors. Between 24 March and 28 March 2016 using cloned or counterfeit ATM cards or credit cards they managed to extract the total sum of SR330, 000 from various ATM machines belonging to the Mauritius Commercial Bank.
2. They were each charged with seventy counts of theft and jointly charged with the offence of conspiracy to commit theft. They pleaded guilty to each charge and were therefore convicted.
3. When it came to sentencing the Appellants, the only pleas in mitigation were that they were persons of previous good character, that they were family men and that they had pleaded guilty.

4. They were sentenced to two years and five months for each of the counts of theft and four years imprisonment for the charge of conspiracy to commit the felony of theft with the sentences to run concurrently.
5. Appealing against the sentences, they have submitted that the sentences were manifestly harsh and excessive and that the sentence of four years imposed by the sentencing judge does not correspond to the pattern of sentencing in similar sentences.
6. Learned Counsel for the Appellants referred the sentencing judge to the same authorities which he now refers this Court to, that is the case of *R v Mullner and ors* [2016] SCSC 66, and *Hakim Yusuf Mohamed and ors* CS 34/2013, the only similar cases in this jurisdiction. Although the convicts in the former case received a sentence of six months and fines of SR30, 000 each, and in the latter case three years imprisonment we find much like the sentencing judge that the reported case notes provide little detail of the precise charges or the circumstances of the case. That authorities therefore is of little use to this court. It does not by any stretch of the imagination establish a pattern of sentencing.
7. We are much persuaded by the approach of the sentencing judge whose methodology should be commended and emulated when considering sentences generally. He found that the maximum sentence for theft and conspiracy to commit theft is seven years imprisonment. He accepted that given that these offenses were committed as a series of transactions in the same period the sentences should be consecutive and not concurrent.
8. He gave an appropriate discount after considering the mitigating factors we have outlined above. He was of the view however, which view we endorse, that the sentence imposed in *Mullner* did not reflect the seriousness of the offences and the circumstances of the matter.
9. In the present case the scheme was sophisticated, well planned and well executed. Fifty nine cloned or counterfeit ATM or credit cards were seized together with lap tops, pen drives, magnetic striped plastic cards and card reading and writing devices. They had succeeded on withdrawing money seventy times. The sentencing judge found that they

had deliberately targeted a small island nation in the Indian Ocean probably with the preconception that it was a soft touch.

10. The sentencing judge relied on the case of *Hong Kong Special Administrative Region v Oancea and ors* DCCC782/2011 in which the following guidance was given by Tallentire J in respect of sentencing in a similar case: The factors to be considered in such cases are [1] the size of the operation, for example, the amount of money involved, [2] the number of persons involved, [3] the number of forged or fake credit cards involved, [4] the level of sophistication and planning, [4] the international dimension, and [5] the role of the accused and whether they were mere cogs in the wheel or planners of the operation.
11. We find the same approach taken in similar cases in Singapore, another country of a mercantile tradition. If anything, similar offences as to the present cases are met with stiffer sentences: in *Ont Toing Poh v PP* [1998] 2 SLR 853 a sentence of five years was given on ten charges of cheating and abetment of cheating by the use of counterfeit cards. In *Navaseelan Balasingham v PP* [2007] 1 SLR 767 on appeal Yong Kwang J revised the total sentence of five and half years of imprisonment for the offence of theft by using counterfeit ATM cards to withdraw cash from ATMS to seven and half years imprisonment.
12. Similarly, in the UK in *R v Taj, R v Gardner and R v Samuel* [2003] EWCA Crim 2633, sentences of five and a half years, four years and three years were passed by the Court of appeal on the three accused persons charged with conspiring with others to defraud banks and credit card companies through the production of counterfeit credit and debit cards. That is in fact the current pattern of sentencing across different jurisdictions faced with the same crimes.
13. In the light of these considered factors we are not of the view that the sentences meted out were in any way harsh or manifestly excessive or not in keeping with present patterns of sentencing.
14. The appeal is therefore dismissed.

M. Twomey (J.A)

I concur:

F. MacGregor (PCA)

I concur:

B. Renaud (JA)

Signed, dated and delivered at Palais de Justice, Ile du Port on 07 December 2017