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The Limits of Plea Agreements

*Oh Hin Kwan Gilbert v Public
Prosecutor [2025] SGHC 22*

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**LEGAL
UPDATE**

In this Update

How much weight does a plea agreement carry in the Court's decision? In *Oh Hin Kwan Gilbert v Public Prosecutor* [2025] SGHC 22 the High Court dismissed an appeal against a sentence of imprisonment despite the parties having agreed to seek a fine if the appellant pleaded guilty.

This case highlights that sentencing is in the Court's purview. A plea agreement is only between the parties, and does not fetter the Court's sentencing discretion.

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INTRODUCTION

In *Oh Hin Kwan Gilbert v Public Prosecutor* [2025] SGHC 22, the High Court considered an appeal against sentence.

The facts of the case and underlying offence are not controversial and are explained further below.

This update focuses on the plea agreement between the Prosecution and the Defence, where the Prosecution had agreed to seek a fine if the appellant agreed to plead guilty. At first instance both sides submitted that the proper sentence was a fine. However the District Judge in *Public Prosecutor v Oh Hin Kwan Gilbert* [2024] SGMC 30 imposed 1-week imprisonment.

On appeal, the appellant argued that the Court should “accord due weight” to the plea agreement when determining the appropriate sentence because the appellant acted in reliance on the agreement, such that material facts and circumstances were not as comprehensively ventilated in the earlier proceedings.

This argument was rejected by the High Court which emphasised that plea agreements do not fetter the Court’s discretion.

BACKGROUND FACTS

The appellant was a Director-General at the Ministry of Foreign Affairs (“**MFA**”). He pleaded guilty to an offence under Section 182 of the Penal Code, for giving false information to the Deputy Secretary (Management) of the MFA.

The basic facts are that the appellant lied to his colleague that the “parents of a Chinese diplomat” wanted to have a package sent to the appellant, and asked him to use the diplomatic bag service. Diplomatic bags are packages for official correspondence, which are protected by diplomatic immunity and cannot be searched or seized by Customs.

In truth the package was for the appellant’s friend, a Chinese national who was not a diplomat. This package contained 21 luxury watches, a ring and seven children’s books.

As things turned out, the diplomatic bag service was suspended at the time and the appellant’s colleague carried the sealed package in his personal luggage. This led to Immigration and Checkpoints Authority officers discovering the luxury watches in the bag during screening.

After he was found out, the appellant was concerned about disciplinary action and sent false information to the Deputy Secretary stating that the watches belonged to his father.

Two other charges were also taken into consideration. The first was for cheating the MFA by dishonestly concealing the fact that a package of Panadol sent to Beijing via diplomatic bag service was intended for a personal acquaintance of the appellant. The second was for abetting the cheating of MFA by instigating his colleague to send the package of luxury watches by diplomatic bag service.

KEYPOINT

Plea agreements are only made between the Prosecution and the Defence. The court is not a party to such agreements.

PLEA AGREEMENTS

The High Court noted that the appellant's reliance on an earlier decision in *Janardana Jayasankarr v Public Prosecutor* [2016] 4 SLR 1288 ("**Janardana**") was misconceived. The Chief Justice in that case had observed that when the Prosecution changes its sentencing position from first instance and on appeal, it should articulate and explain its reasons. Further, it was an open question whether the Prosecution could change its position on sentence if it determined at first instance that it was in line with the public interest to submit for a lower sentence as part of plea bargaining.

However, the Court in *Janardana* had also stated the legal position that sentencing is a matter for the Court and it was ultimately for the Court to assess what sentence would be just in the circumstances.

On appeal in the present matter, the appellant's argument was that the Court should accord due weight to the Prosecution's sentencing position at first instance (*ie* that the appropriate sentence was a fine) and the plea agreement, when determining the proper sentence to impose.

This argument was rejected. The Court highlighted that plea arguments are between the Prosecution and the Defence, and that the Court is not a party to such agreements.

It is settled law that sentencing is in the Court's discretion and the Prosecution's position on its own sentencing position has no bearing on the sentence which the Court could impose. The appellant's argument would impermissibly fetter the Court's sentencing discretion.

KEYPOINT

Any representation by the Prosecution on its sentencing position has no bearing on the sentence which the Court may impose.

KEY LEARNING POINTS

Negotiations with the Prosecution are common in criminal proceedings. These negotiations support the general administration of justice and save time for the Court, by identifying and narrowing the scope of issues in dispute and concluding cases which can be resolved without trial.

It is not uncommon to reach agreement with the Prosecution that if the accused person pleads guilty, the Prosecution would proceed on a certain formulation of charges (eg how many charges, under which statutory provisions for what offence) and/or would submit for a certain sentence.

However, the Court is not bound by such a plea agreement between the Prosecution and the Defence. Although the sentence eventually imposed by the Court typically falls between the parties' submissions, the Court's sentencing discretion is not limited by the parties' submissions. If the Court does not agree, the Court has the power to impose a different sentence whether higher or lower than the parties' submissions. This could include a sentence of imprisonment even if both parties agree that a fine is appropriate.

Plea bargaining has its limits but nevertheless remains beneficial in most cases. Although a plea agreement does not displace the Court's discretion, it might be easier to convince the Court that a particular sentence is appropriate if both sides are already on the same page.

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