



中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团  
 THE PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA  
 TO THE UNITED NATIONS OFFICE AT GENEVA AND OTHER  
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No. GJ/ 53/2019

Geneva, 15 September 2019

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland presents its compliments to the Secretariat of the Human Rights Council and has the honor to request the latter to deny Ms. CHAN Tanya's accreditation to the Human Rights Council.

It is reported that Ms. CHAN Tanya will take the floor during the 42th Session of the United Nations Human Rights Council on 16 September 2019 as the representative of UN Watch. Ms. CHAN Tanya is a convicted criminal sentenced by the District Court of the Hong Kong Special Administrative Region of China to 8 months' imprisonment and suspended for 2 years under the offense of "Incitement to Commit Public Nuisance" and "Incitement to Incite Public Nuisance" on 10 June 2019.(See attached Verdict)

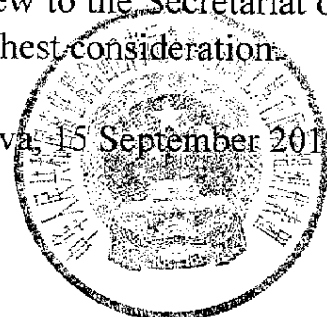
Bearing in mind the lofty goals of this Human Rights body, the Human Rights Council should not be used by a convicted criminal offender, under the name of representative of an NGO, to peddle her political agenda. China hereby requests that the Secretariat of the Human Rights Council deny Ms. CHAN Tanya's accreditation to the Human Rights Council.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to the Secretariat of the Human Rights Council the assurances of its highest consideration.

Geneva, 15 September 2019

the Secretariat of the Human Rights Council

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DCCC 480/2017  
[2019] HKDC 784

**IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
CRIMINAL CASE NO 480 OF 2017**

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HKSAR  
v  
CHAN TANYA (D4)  
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Before: HH Judge Johnny Chan  
Date: 10<sup>th</sup> June 2019  
Present: Mr. David C.Y. Leung, SC. DPP,  
Mr. Lui Tsz Ming Ira, SADPP and Mr. Lau Tak Wai Derek, Senior Public F  
Mr. Ching Y. Wong, SC, leading Mr David MA and Ms. <sup>M</sup> Adg  
Offence: [2] Incitement to commit public nuisance (煽惑他人犯公眾妨擾罪) N  
[3] Incitement to incite public nuisance (煽惑他人煽惑公眾 妨擾) O

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REASONS FOR SENTENCE  
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*The Verdict*

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1. D4 stands convicted after trial of one count of "Incitement to Commit Public Nuisance" together with D1, D2 and D5 to D7 (Charge 2) and one of "Incitement to Incite Public Nuisance" together with D5 to D7 (Charge 3).

*The Application for Adjourment on 24<sup>th</sup> April 2019*

2. I sentenced D1 to D3 and D5 to D9 on 24<sup>th</sup> April 2019. On 24<sup>th</sup> April 2019, Mr. Ma informed me that D4 was diagnosed with a brain tumour, roughly the size of a golf ball and she had to undergo a brain surgery for the removal of the tumour. Mr. Ma applied for an adjourment so that D4 could undergo the brain surgery and recover afterwards. The Prosecution did not take issue with the information placed before me by Mr. Ma and did not oppose to the application for adjourment. I acceded to D4's request to have her case adjourned to today.

*The Facts*

3. The findings of fact are set out in the judgment I gave on 9<sup>th</sup> April 2019.

4. Paragraphs 6, 12 and 15 to 18 of the Reasons for Sentence I gave on 24<sup>th</sup> April 2019 apply equally to D4.

*Background Information of D4*

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5. D4 is 47 years old and single. She studied law at the

University of Hong Kong. Called to the bar in 2003, she is now a

Legislative Councillor.

6. She has no criminal conviction.

*Mitigation*

7. I shall not set out the mitigations made by Mr. Wong SC. I

have the benefit of Mr. Wong SC's full written submissions dated 11<sup>th</sup>

April and 6<sup>th</sup> June 2019. I have also taken into consideration the mitigation

submissions made by other defence counsel in this case.

*R. v Roberts (Richard)*

8. D4 has expressed no regret for what she had done in her

written statement and counsel's mitigation.

9. I adopt what I said in my Reasons for Sentence on 24<sup>th</sup> April

2019 in relation to *R. v Roberts (Richard)* EWCA Crim 2379, i.e.

paragraphs 44 to 49 and 58 to 59 of the Reasons for Sentence.

*Civil Disobedience*

10. Paragraph 63 of the Reasons for Sentence applies equally to

D4.

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*Duration of the Occupation and Apportionment of Responsibility*

11. Paragraph 64 to 73 of the Reasons for Sentence apply equally to D4.

*Alleged Delay in Prosecution*

12. I adopt what I said in the Reasons for Sentence on 24<sup>th</sup> April 2019 concerning the issue of alleged delay in prosecution. Paragraphs 74 to 75 apply equally to D4. I am satisfied that the delay in the present case has not resulted in unfairness to D4.

*Background of D4*

13. On the information placed before me, I accept D4 as a person of positive good character. She has served the Hong Kong since 2006 through various public posts she held.

*Charge 2 and 3*

14. Paragraphs 94 to 96 and 105 of the Reasons for Sentence on 24<sup>th</sup> April 2019 apply equally to D4.

15. All matters taken into consideration, bearing in mind the protest in question was a peaceful one and the widespread disruption caused, in my judgment, a starting point of 9 month's imprisonment is appropriate for Charges 2 and 3.

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21. The Correctional Services Department, in a letter dated 6<sup>th</sup> June 2019 to D4's solicitors, stated that "necessary and appropriate basic medical care is provided by resident Medical Officers from the Department

20. Mr. Wong SC told me without such radiotherapy not only will the tumour remain but also it will start to grow again. After the 30 sessions of radiotherapy, D4 will be assessed to ascertain whether she needs further or different treatment if it was found that the remaining tumour still exists.

19. The doctor opines that it is vital that D4 should receive radiotherapy within these 3 months in an attempt to get rid of the remaining part of the tumour. The radiotherapy treatment will consist of 30 consecutive sessions with one session every day. D4 can only do 5 sessions per week as she needs to rest for the remaining 2 days. The treatment has to be performed by a radio-oncologist with advice from a neurosurgeon.

18. Mr. Wong SC told me this morning that D4's brain tumour was benign. However it had not been completely removed because part of it impacted upon the brain stem and thus part of the tumour still remains.

17. But for the medical condition of D4 which necessitated the adjournment, I would have sentenced D4 to 8 months' imprisonment on 24<sup>th</sup> April 2019.

16. D4 is given 1 month's reduction for her positive good character, that would bring the sentence for each charge down to 8 months.

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Medical Officers will, if necessary, refer cases to public hospitals for further treatment. Medical specialists from the Hospital Authority and the DH also provide consultation and treatment to persons in custody concerned on a regular basis at correctional facilities.”

22. Mr. Wong SC told me that there are only 2 public hospitals that can provide radiotherapy that D4 needs, i.e. Queen Mary Hospital and Queen Elizabeth Hospital. He emphasized the need for a neurosurgeon to be present when the radio-oncologist provides the treatment to D4.

23. Apart from the radiotherapy that D4 needs to receive, Mr. Wong SC told me that the brain surgery has caused a serious side effect to D4. She is now suffering from double vision which is causing her problems with balancing. She requires someone to assist her when she walks, in order to prevent her from falling due to bad balancing. Mr. Wong SC told me the radiotherapy will worsen D4's double vision as the treatment will cause her dizziness. The radiotherapy will also cause her nausea, poor appetite and dry throat. During the period D4 receives radiotherapy, she has to be taken care of by others in her daily life.

24. Much of what Mr. Wong SC told me is supported by a letter dated 6<sup>th</sup> June 2019 by Dr. Fung Ching Fai. A photograph taken sometime after the brain surgery show a long scar. As Mr. Wong SC rightly observed, a brain surgery of the kind undergone by D4 is not something one would take lightly. One would not undergo a brain surgery and take all the risks inherent in the brain operation to avoid an 8 months' imprisonment by sentence. Even if one wanted to avoid an 8 months' imprisonment by

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staging a brain surgery, one would need the timely presence and availability for use a prop, i.e. a brain tumour the size of a golf ball. On the materials before me, I have no doubt what Mr. Wong SC told me about the prognosis and the treatment plan for D4 is true.

25. The Prosecution did not take issue with the prognosis and the treatment plan.

26. Although the Correctional Services Department assured D4's solicitors in its letter dated 6<sup>th</sup> June 2019 that proper medical care and attention will be given to persons in custody with due regard to their circumstances, given the radiotherapy that D4 needs to receive, the effect on D4's health if the remaining tumour is allowed to grow, the double vision problem of D4 and the need to have someone to take care of her during the period when she received radiotherapy, I am not sure an immediate term of 8 months' imprisonment will not impact adversely on D4's health.

27. The medical condition of a defendant would not avail him/her if the sentence to be imposed was a lengthy one, e.g. 5 years instead of 8 months. The court can only order the suspension of a term of imprisonment if it is under 2 years. If what a defendant needs is special medical treatment in the few months to follow after sentence, a further reduction of a few months would not help him/her in the treatment plan.

28. In the case of D4, the proper sentences for Charges 2 and 3 are ones of months in single digit, not years. In my judgment, it is in the interest of justice that in the coming months she be allowed to receive



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radiotherapy treatment provided by medical experts of her own choice and

to be taken care of by her family members.

29. In my judgment, the current physical condition of D4 together

with the need of radiotherapy constitute very exceptional circumstances

which justify the sentence to be suspended.

30. For the reasons given, on Charges 2 and 3, I sentence D4 each

to 8 months' imprisonment.

31. Both terms are to run concurrently with each other and

suspended for 2 years.

(The meaning of a S.S. and the effect of a breach of it explained to and

understood by D4)

( Johnny Chan )  
District Judge