

## **Transcript for a Plea in Mitigation**

Robbery, domestic premises, small knife used, first time, peripheral participation, not mastermind or instigator, surrender without resistance, mounting cash debt and threats by loansharks, no injury, no previous convictions, guilty plea, defendant 19 years of age, supports family, no skills, co-operative with prosecution, elderly and very young victims, victims tied up, premeditated crime, significant proceeds (\$250,000).

M'lord, I appear on behalf of Mr. Li today to make a plea in mitigation.

M'lord, Mr Li was used. He was used by an older, experienced criminal, a Mr Lo, who is co-accused in these proceedings. At the time leading to the commission of the offence, Mr Lo knew that young Mr Li, 19 years old at the time was suffering from unpayable gambling debts borrowed from loan sharks mounting over \$3,000,000, which has resulted in his family being subjected to serious threats of violence and actual damage to their family farm. Kerosene has been poured through their front door and their family cats have been killed. Mr Li and his family were living in fear of their lives. Your Lordship may appreciate how, at the time, Mr Lo's suggestion of quick monetary reward might have influenced the brittle state of the defendant's mind.

M'lord, Mr Li has a clear record. He is not a man bent on stealing and breaking the law but merely a reluctant participant in the robbery which the co-accused had initiated and planned. Mr Li was against the use of any violence, and as your lordship might glean from the facts, no injury was done to the victims in the incident. When the police entered the premises, Mr Li surrendered without any resistance. He did not even try to escape, though the co-accused did. Furthermore, the stolen property was recovered and returned to their owners. Mr Li only did what he had done because Mr Lo took advantage of his desperate circumstances at the time.

M'lord, Mr Li has shown genuine remorse in the present case. He pleaded guilty and saved the court from having to hold a trial. He has also provided much

assistance in the prosecution of the co-accused Mr Lo. Mr Li regrets having shamed his elderly parents who are leaders of his village clan in the New Territories. Suffice to say this incident has caused his family much loss of face. Mr Li is also very sorry for the trouble caused to the victims, who are about the same age as his parents and younger brother.

M'lord, I have explained to Mr Li that robbery is a very serious offence, and a 7-year tariff is set out by the oft-cited case of *Mo Kwong Sang 1981 HKLR 610*. However, given that this was his first offence, the guilty plea, assistance rendered to the prosecution and the exceptional circumstances in which the crime was committed, I urge your lordship to consider a lenient a sentence as possible. If I may, I would also urge your lordship to consider obtaining training centre reports and making an order for **rehabilitation in a training centre**.

The defendant in this case is very well suited to custody in a training centre. He is 19 years old and the discipline of the training centre will ensure that he does not rack up gambling debts anymore. The centre will also provide him with solid vocational skills, which he lacks and will enable him to contribute more to his family - a filial act which he was already doing prior to the robbery.

In light of the honourable court's view of the seriousness of the crime, I shall make further submissions on training centre orders for robbery. A Training Centre Order for robbery is not unknown in Hong Kong, and objective benefits for such an order have been put forward in the case of *Cheung Wing Wai, Criminal Appeal #289 of 1992*. <p.4> There, the court observed that detention in a training centre can be up to 3 years and even then, there can be post-release supervision up to another 3 years thereafter. Moreover, the court acknowledged that akin to a prison sentence, rehabilitation in a training centre carries with it considerable punitive and deterrent elements whilst keeping a defendant away from undesirable influences.

It is submitted that a training centre order is appropriate in light of the following 3 circumstances:

Firstly, Li is aged only 19 years. He is of previous good character and only succumbed to this act of robbery after association and solicitation by an older

person experienced in crime. It is submitted that imprisonment will only subject Li to more of this **undesirable influence**.

Secondly, detention in a training facility will allow Li to **learn work skills** that will supplement his limited schooling and help him find a better source of income to better support his parents, a filial act which he had been doing prior to his arrest.

Thirdly, Li's participation in the crime was **not of the most serious type**. The knife which he used was a type of small craft knife and no injury whatsoever was inflicted upon the victims of the incident. Li did not try to escape the scene with any of the stolen items nor did he put up any resistance to arrest.

As to the **length of the sentence**, I make 3 points:

Firstly, it must be noted that the guidelines set down in *Mo Kwong Sang* were intended for {sentencing after trial resulting in a guilty plea}. This is not the case here as Li has already **pleaded guilty**. Although the plea was not entered during the committal stage, it is submitted that this was not a deliberate tactical manoeuvre and should result in the customary **1/3 discount** to sentence.

Secondly, Li having regret his actions, proceeded to **assist the prosecution** in their case against the instigator and mastermind of the crime. Coupled with a guilty plea, this normally entitles a defendant to a **50% reduction in sentence**, see *Lau Yuen 1991 2 HKLR 278*.

Thirdly, may I refer your honour to the case of *Hui Chau Hoi 991/1981* where the facts were similar to those of the current case. There, the defendant had, together with a co-accused, tied up a child and an elderly woman and threatened them with knives as well as an imitation firearm. The court saw fit, in light of the defendant's **remorse**, to impose a sentence of 3 years imprisonment instead of 6. In the present case, Li is genuinely remorseful, having only committed the crime out of character under **desperation**. At the time of the offence, Li suffered, and is still suffering from a debt, now mounting to over \$3,000,000, which has resulted in his family being subjected to serious threats of violence and actual damage to their family home. Li regrets having committed the crime because he is now unable to support his family as he had previously done and that he has brought shame upon his parents, who are leadership figures of his village - their health having

deteriorated as a result of this incident.

It is urged upon your honour that these mitigating factors, if taken in parallel, would tend to a sentencing term of 2 years in a Training Centre.

May I invite your lordship to order a set of training centre records to assess the defendant's suitability for custody in a training centre, and unless I can clarify any further matters for the court, those are my submissions.

10 Oct 2007

Cliff Lui

Counsel for the defendant