SPC Guiding Case No. 106: Case of Xie Jianjun, Gao Lei, Gao Erqiao, and Yang Zebin for Operating a Gambling House

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 25, 2018.

Keywords

Criminal / crime of operating a gambling house / online gambling / WeChat group / grabbing red packets in a WeChat group

Holding

The act of, for the purpose of profit, inviting people to join a WeChat group, using the WeChat group for control and management, conducting gambling by the method of grabbing red packets, and continuously organizing gambling activities over a period of time, falls within "operating a gambling house" prescribed by paragraph 2 of Article 303 of the Criminal Law.

Basic Facts

From September 2015 to November 2015, Xiang [X] (already sentenced), while active in Xiaoshan District, Hangzhou, separately conspired with the defendants Xie Jianjun, Gao Lei, Gao Erqiao, and Yang Zebin and others, for the purpose of profit, inviting others to join a WeChat group he established, and organizing others to gamble by the method of grabbing red packets in the WeChat group. During this period, the defendants Xie Jianjun, Gao Lei, Gao Erqiao, and Yang Zebin respectively helped Xiang [X] send red packets on his behalf in the gambling red-packet group, and received commission from the rake according to the number of gambling red packets sent.

Judgment

On November 9, 2016, the Xiaoshan District People's Court of Hangzhou City, Zhejiang Province rendered Criminal Judgment (2016) Zhe 0109 Xing Chu No. 1736: (1) Defendant Xie Jianjun committed the crime of operating a gambling house and was sentenced to fixed-term imprisonment of three years and six months, and fined RMB 25,000. (2) Defendant Gao Lei committed the crime of operating a gambling house and was sentenced to fixed-term imprisonment of three years and three months, and fined RMB 20,000. (3) Defendant Gao Erqiao committed the crime of operating a gambling house and was sentenced to fixed-term imprisonment of three years and three months, and fined RMB 15,000. (4) Defendant Yang Zebin committed the crime of operating a gambling house and was sentenced to fixed-term imprisonment of three years, and fined RMB 10,000. (5) The six mobile phones used by the four defendants as instruments of the crime and transferred with the case were confiscated and turned over to the state treasury; the criminal proceeds of the four defendants that had not yet been recovered shall continue to be recovered. After the judgment was pronounced, Xie Jianjun, Gao Erqiao, and Yang Zebin were dissatisfied and separately appealed to the Hangzhou Intermediate People's Court of Zhejiang Province. On December 29, 2016, the Hangzhou Intermediate People's Court of Zhejiang Province rendered Criminal Judgment (2016) Zhe 01 Xing Zhong No. 1143: (1) affirming the conviction part of items (1), (2), (3), and (4) and the part of item (5) concerning confiscation of instruments of crime and recovery of criminal proceeds of Criminal Judgment (2016) Zhe 0109 Xing Chu No. 1736 of the Xiaoshan District People's Court of Hangzhou City; (2) revoking the sentencing part of items (1), (2), (3), and (4) of that judgment; (3) ordering that Appellant (defendant in the original trial) Xie Jianjun, having committed the crime of operating a gambling house, be sentenced to fixed-term imprisonment of three years and fined RMB 25,000; (4) ordering that Defendant Gao Lei in the

Source: https://www.danyoungcpa.com/spc-guiding-case-106-china/

original trial, having committed the crime of operating a gambling house, be sentenced to fixed-term imprisonment of two years and six months and fined RMB 20,000; (5) ordering that Appellant (defendant in the original trial) Gao Erqiao, having committed the crime of operating a gambling house, be sentenced to fixed-term imprisonment of two years and six months and fined RMB 15,000; and (6) ordering that Appellant (defendant in the original trial) Yang Zebin, having committed the crime of operating a gambling house, be sentenced to fixed-term imprisonment of one year and six months and fined RMB 10,000.

Reasoning

The effective judgment of the court held that the act of, for the purpose of profit, inviting people to join a WeChat group, using the WeChat group for control and management, conducting gambling by the method of grabbing red packets, setting gambling rules, and continuously organizing gambling activities over a period of time, falls within “operating a gambling house” prescribed by paragraph 2 of Article 303 of the Criminal Law. Xie Jianjun, Gao Lei, Gao Erqiao, and Yang Zebin, together with others, operated a gambling house, and all had committed the crime of operating a gambling house, which constituted a serious circumstance. Xie Jianjun, Gao Lei, Gao Erqiao, and Yang Zebin had relatively minor status and role in the joint crime and were all accomplices; the original judgment’s failure to find them accomplices was improper and was corrected in accordance with the law, with a lighter punishment for Xie Jianjun and mitigated punishment for Gao Erqiao, Yang Zebin, and Gao Lei. Yang Zebin voluntarily surrendered after committing the crime and truthfully confessed his crimes, which constituted voluntary surrender, and he was given a lighter punishment in accordance with the law. Xie Jianjun, Gao Erqiao, and Gao Lei truthfully confessed the criminal facts after their capture, and were given lighter punishment in accordance with the law. Xie Jianjun, Gao Erqiao, Yang Zebin, and Gao Lei returned the criminal proceeds after the case, and during the second-instance trial Yang Zebin’s family members also returned the criminal proceeds on his behalf, and they were all given lighter punishment as appropriate.

Relevant Legal Provisions

Paragraph 2 of Article 303 of the Criminal Law of the People’s Republic of China

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People’s Court shall prevail. This translation does not constitute legal advice.