SPC Guiding Case No. 62: Case of Wang Xinming for Contract Fraud

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Keywords

Criminal / contract fraud / offense of amount / completed offense / attempted offense

Holding

In an offense of amount, where the completed part and the attempted part of the crime respectively correspond to different statutory sentencing ranges, the court should first decide whether to impose a mitigated punishment on the attempted part, determine the statutory sentencing range corresponding to the attempted part, and then compare it with the statutory sentencing range corresponding to the completed part, select the statutory sentencing range with a heavier punishment, and impose a heavier punishment as appropriate; where the two fall within the same sentencing range, a heavier punishment shall be imposed as appropriate on the basis of the completed offense.

Basic Facts

On July 29, 2012, the defendant Wang Xinming, using a forged household register and identity card and impersonating the homeowner, namely Wang Xinming's father, signed a house sale and purchase contract with the victim Xu Mou at the Gucheng Park store of Lianjia Real Estate Brokerage Co., Ltd. in Shijingshan District, Beijing, under the pretext of selling a house at No. 28 Gucheng Road in that district, agreeing on a purchase price of RMB 1 million, and collected a deposit of RMB 10,000 from the victim Xu Mou on the spot. On August 12 of the same year, Wang Xinming again collected a down payment of RMB 290,000 paid by the victim Xu Mou, and agreed that the remaining amount would be paid after the transfer of title. Later, when the parties were handling the real estate transfer procedures, Wang Xinming's false identity was discovered by staff of the Shijingshan District Housing and Urban-Rural Development Commission, and the remaining amount was not obtained. On April 23, 2013, Wang Xinming was captured by the public security organ. The next day, Wang Xinming's relatives returned the illicit gains to the victim Xu Mou, and the victim Xu Mou expressed forgiveness for Wang Xinming.

Judgment

After trial, on August 23, 2013, the Shijingshan District People's Court of Beijing rendered the criminal judgment (2013) Shi Xing Chu Zi No. 239, holding that the defendant Wang Xinming's conduct had already constituted the crime of contract fraud, with a huge amount; at the same time, given that he truthfully confessed the criminal facts, returned and compensated all the illicit gains with the help of his relatives, and obtained the victim's forgiveness, he was given a lighter punishment in accordance with the law. The charge alleged by the public prosecution organ, the Shijingshan District People's Procuratorate of Beijing, was established, but its determination that the amount was especially huge and that it was an attempted crime was erroneous and was corrected. Accordingly, the defendant Wang Xinming was found to have committed the crime of contract fraud and was sentenced to fixed-term imprisonment of six years and a fine of RMB 6,000. After the judgment was pronounced, the public prosecution organ protested, arguing that the criminal amount should be RMB 1 million, which was especially huge, while the original judgment did not evaluate the attempted RMB 700,000 and only determined the criminal amount as huge based on the completed RMB 300,000, which was an erroneous application of law. The First Branch of the Beijing Municipal People's Procuratorate's opinion in support of the protest was consistent with this. Wang Xinming appealed on the

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ground that the original sentence was too heavy, and applied to withdraw the appeal during the trial. After trial, on December 2, 2013, the Beijing First Intermediate People's Court rendered the criminal ruling (2013) Yi Zhong Xing Zhong Zi No. 4134: The appellant Wang Xinming's withdrawal of appeal was permitted, and the original judgment was affirmed.

Reasoning

The effective judgment held: Wang Xinming, for the purpose of illegal possession, signed a contract by impersonating another person's name, and his conduct had already constituted the crime of contract fraud. The first-instance judgment ascertained the facts clearly, the evidence was reliable and sufficient, the characterization was accurate, and the trial procedure was lawful, but its failure to evaluate the criminal fact of the attempted RMB 700,000 was improper and was corrected. According to the relevant provisions of the Criminal Law and judicial interpretations, considering that Wang Xinming's contract fraud was completed to the extent of RMB 300,000 and attempted to the extent of RMB 700,000, but a mitigated punishment could be imposed on that part, that Wang Xinming truthfully confessed the criminal facts, returned and compensated all the illicit gains and obtained the victim's forgiveness, and other factors, the original sentence was within the statutory sentencing range, and the protest organ also did not raise an objection to the sentence, so it should be affirmed. The protest opinion of the Shijingshan District People's Procuratorate of Beijing and the opinion in support of the protest of the First Branch of the Beijing Municipal People's Procuratorate were adopted as appropriate. Given that Wang Xinming applied to withdraw the appeal during the second instance, and the application to withdraw the appeal complied with the law, the second-instance court ruled to permit the withdrawal of the appeal in accordance with the law and affirmed the original judgment.

The focus of the dispute in this case was how to determine the sentence in an offense of amount where a completed offense and an attempted offense coexist. Article 6 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Fraud provides: "Where fraud has both completed and attempted parts, and they respectively reach different sentencing ranges, punishment shall be imposed according to the provision with a heavier punishment; where they reach the same sentencing range, punishment shall be imposed on the basis of the completed crime of fraud." Therefore, for cases in an offense of amount where the completed and attempted parts of the criminal act coexist and both constitute crimes, when determining the statutory sentencing range applicable to the whole case, the court shall first evaluate whether a mitigated punishment should be imposed on the attempted part, determine the statutory sentencing range corresponding to the attempted part, and then compare it with the statutory sentencing range corresponding to the completed part to determine the statutory sentencing range applicable to the whole case. If the statutory sentencing range corresponding to the completed part is heavier or the two are the same, the statutory sentencing range corresponding to the completed part shall be used to determine the statutory sentencing range applicable to the whole case, and other circumstances, including the attempted part, shall be treated as adjustment factors for determining the starting point of sentencing, thereby determining the base sentence. If the statutory sentencing range corresponding to the attempted part is heavier, the statutory sentencing range corresponding to the attempted part shall be used to determine the statutory sentencing range applicable to the whole case, and other circumstances, including the completed part, together with the attempted circumstances of the attempted part, shall be treated as adjustment factors for determining the starting point of sentencing, thereby determining the base sentence.

In this case, the completed part of Wang Xinming's contract fraud was RMB 300,000, which, according to the judicial interpretation and Beijing's specific implementation standards, corresponded to a statutory sentencing range of fixed-term imprisonment of not less than three years but not more than ten years; the attempted part was RMB 700,000, and considering the specific circumstances of this case, a one-level mitigated punishment should be imposed on the attempted part, so the statutory sentencing range of the

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attempted part should be fixed-term imprisonment of not less than three years but not more than ten years, the same as the statutory sentencing range corresponding to the completed RMB 300,000. Therefore, the statutory sentencing range applicable to Wang Xinming was determined as fixed-term imprisonment of not less than three years but not more than ten years based on the basic criminal fact of the completed contract fraud of RMB 300,000, and the criminal fact of the attempted RMB 700,000, together with his truthful confession of the criminal facts, return and compensation of all the illicit gains, and obtaining the victim's forgiveness, were all treated as sentencing circumstances. Therefore, Wang Xinming was given a lighter punishment and sentenced to fixed-term imprisonment of six years and a fine of RMB 6,000.

Relevant Legal Provisions

Article 23 of the Criminal Law of the People's Republic of China.

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