SPP Guiding Case No. 240: Supervision Case on the Filing of Charges Against Xu Moumou et al. for Picking Quarrels and Affray

Dan Young Business Consultancy — www.danyoungcpa.com

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

Supreme People's Procuratorate Guiding Case No. 240 (Case-Filing and Investigative Activity Supervision Series)

Keywords

Case-filing supervision; withdrawal of a case that should not be withdrawn; failure to file a case that should be filed; substituting administrative penalty for criminal punishment; re-filing of a case

Holding

In supervision and case handling, the people's procuratorate shall pay attention to examining whether a case involves "substituting administrative penalty for criminal punishment" or "downgraded" handling, and lawfully submit supervision opinions for filing or re-filing the case. For cases where the parties have produced settlement or forgiveness agreements, attention shall be paid to examining whether they fall within the scope of public prosecution cases subject to settlement between the parties, and handling opinions shall be submitted in accordance with the law. Where, at the request of the public security organ, the people's procuratorate examines case evidence materials under the mechanism of hearing opinions in major and difficult cases, it shall pay attention to discovering whether there are other criminal leads, and lawfully submit opinions and suggestions to the investigating organ for supplementary investigation or filing of a case.

Basic Facts

The defendant Xu Moumou, male, born in 1998, unemployed.

The basic circumstances of the other defendants are omitted.

At around 5 a.m. on June 23, 2022, Xu Moumou and four others got into a verbal dispute with the victim Zhang Moumou over a trivial matter at the entrance of a karaoke hall in Daqing City, Heilongjiang Province, then beat Zhang Moumou, put him into the trunk of a vehicle, and took him to a remote place where they restricted him from leaving. After the public security organ received a report from the public and arrived at the scene, Xu Moumou and the others fled by car, and Zhang Moumou was rescued. On the same day, the Datong Branch of the Daqing Municipal Public Security Bureau filed and investigated Xu Moumou and the others on suspicion of the crime of unlawful detention. Because the case involved many persons and occurred in a busy commercial area with a seriously adverse social impact, the Datong Public Security Branch initiated the mechanism of hearing opinions in major and difficult cases and, in accordance with the relevant provisions on centralized jurisdiction, requested the People's Procuratorate of Daqing High-tech Industrial Development Zone to submit opinions and suggestions on the handling of the case.

Procuratorate Performance of Duties

Discovery of leads. Upon reviewing the evidence in the case, while submitting opinions and suggestions on the original case, the High-tech Zone People's Procuratorate discovered that Xu Moumou had repeatedly mentioned in interrogation transcripts that he had previously been administratively punished for beating others. Upon retrieving the public security penalty files and verifying: in August 2020, Xu Moumou and others were filed and investigated by the public security organ on suspicion of the crime of intentional injury for injuring others with weapons, but the criminal case was later withdrawn on the ground of settlement between the parties and converted to administrative penalty; in July 2020 and September 2021, Xu Moumou and

Source: https://www.danyoungcpa.com/spp-guiding-case-240-china/

others were twice filed by the public security organ as public security cases for beating others with weapons and gathering multiple persons to fight with weapons, and were closed through mediation without punishment. The above three acts were all suspected of constituting crimes, and the original handling might involve withdrawal of cases that should not have been withdrawn and failure to file cases that should have been filed.

Investigation and verification. In response to the above supervision leads, the High-tech Zone People's Procuratorate focused on the following investigation and verification work. First, with respect to the August 2020 case in which the public security organ filed a criminal case on suspicion of intentional injury and then converted it to administrative penalty, by interrogating the criminal suspects, verifying the cause of the facts with the staff of the karaoke hall involved, and reviewing the appraisal opinions, it ascertained that Xu Moumou and others wantonly beat others in a public place with weapons causing minor injury, which was suspected of the crime of picking quarrels and provoking trouble and required criminal liability, and that the public security organ's withdrawal of the criminal case and conversion to administrative penalty was improper. Second, with respect to the two cases in July 2020 and September 2021 handled by the public security organ as public security cases, by verifying the causes, the process of gathering, and whether social order was disrupted, it ascertained that Xu Moumou and others kept tools such as machetes and pickaxe handles in their vehicle, and would organize multiple persons to beat others or fight whenever a verbal dispute arose, which was suspected of the crimes of picking quarrels and provoking trouble and of affray respectively and required criminal liability, and that the public security organ's filing and closing of these cases as public security cases through mediation was improper.

Supervision opinions. On July 18, 2022, in accordance with the relevant provisions on centralized jurisdiction, the High-tech Zone People's Procuratorate separately issued Notices Requiring an Explanation of the Reasons for Not Filing a Case to the public security branch with original jurisdiction.

On July 19, with respect to the August 2020 intentional injury case that was withdrawn and converted to administrative penalty, the relevant public security branch replied that the case did not constitute the crime of picking quarrels and provoking trouble, and that since both parties had settled and the victim applied for withdrawal, it could be handled as a non-criminal case. After review, the High-tech Zone People's Procuratorate found that Xu Moumou and others wantonly beating others in a public place with weapons causing minor injury was of an egregious nature and disrupted social order, and should be held criminally liable for the crime of picking quarrels and provoking trouble; the previous handling — filing on suspicion of intentional injury and then withdrawing the criminal case and converting to administrative penalty on the ground of party settlement and application for withdrawal — was clearly improper. On the same day, the High-tech Zone People's Procuratorate issued a Notice of Case Filing to the public security organ, requiring it to file and investigate Xu Moumou and the others on suspicion of the crime of picking quarrels and provoking trouble.

Supervision results. On July 21, 2022, the relevant public security branches separately filed and investigated Xu Moumou and the others on suspicion of the crimes of picking quarrels and provoking trouble and of affray.

At the same time, the High-tech Zone People's Procuratorate continuously followed up on the investigation of the unlawful detention case of Xu Moumou and the others. Based on the newly collected evidence, when reviewing and approving the arrest of Xu Moumou and the others, it changed the charge to the crime of picking quarrels and provoking trouble, and, combined with the cases of picking quarrels and affray subject to supervised filing, proposed in the form of a supplementary investigation outline the adjustment of the direction of investigation and evidence collection, comprehensively ascertaining the illegal and criminal facts of Xu Moumou and the others and collecting evidence on the structure of their gang, income and expenditure, and the harm caused to society. In March 2023, the picking-quarrels and affray cases supervised by the High-tech Zone People's Procuratorate and the picking-quarrels case investigated by the

Source: https://www.danyoungcpa.com/spp-guiding-case-240-china/

Datong Public Security Branch were investigated jointly, and upon completion of investigation by the Datong Public Security Branch, were transferred to the High-tech Zone People's Procuratorate for review and prosecution. It was ultimately ascertained that from June 2020 to June 2022, Xu Moumou gathered multiple persons for the purpose of illegal profit, and in multiple places recruited and controlled underage girls to engage in paid companionship. During this period, he repeatedly committed crimes such as organizing minors to engage in activities violating public security administration, rape, picking quarrels and provoking trouble, affray, and procuring prostitution, committing evil deeds and oppressing the masses, seriously disrupting social order and causing a relatively serious adverse social impact, forming a gang of evil forces with Xu Moumou as the ringleader and other relevant persons as members.

On June 9, 2023, the People's Court of Daqing High-tech Industrial Development Zone rendered a first-instance judgment, finding that Xu Moumou and the others constituted a gang of evil forces, and that Xu Moumou committed the crimes of organizing minors to engage in activities violating public security administration, rape, picking quarrels and provoking trouble, affray, and procuring prostitution; combining the punishments, it decided to impose fixed-term imprisonment of 15 years with a fine. The other defendants were sentenced to fixed-term imprisonment ranging from one year and six months to seven years. Xu Moumou and the others did not appeal, and the judgment became effective.

Extended performance of duties. In response to the problem exposed in the case that many karaoke halls in the area under jurisdiction had long arranged for minors to provide paid companionship, the High-tech Zone People's Procuratorate issued a social governance procuratorial suggestion to the relevant public security organ. In August 2023, the public security organ adopted the procuratorial suggestion and organized a special rectification campaign against the illegal reception of minors and paid companionship in relevant entertainment venues, while strengthening publicity of minor protection policies such as mandatory reporting.

Guiding Significance

(1) In supervision and case handling, the people's procuratorate shall pay attention to examining whether a case involves "substituting administrative penalty for criminal punishment" or "downgraded" handling, and lawfully submit supervision and correction opinions. For cases suspected of involving crimes where the public security organ directly handles them as public security cases without filing criminal cases, or files criminal cases and then converts them to public security cases for closure, the procuratorial organ shall pay attention to examining whether they fall within the circumstances under Article 16 of the Criminal Procedure Law where criminal liability is not pursued; where they do not, it shall lawfully supervise the public security organ to file or re-file the case for investigation. For cases where the parties have produced settlement or forgiveness agreements, attention shall be paid to examining whether they fall within the scope of public prosecution cases subject to settlement between the parties as prescribed by the Criminal Procedure Law, and a decision shall be made in accordance with the law on whether to supervise the filing of the case.

(2) Where, at the request of the public security organ, the people's procuratorate examines case evidence materials under the mechanism of hearing opinions in major and difficult cases, it shall pay attention to discovering whether there are other criminal leads. Where it discovers omitted crimes or omitted accomplices that should be investigated by the requesting public security organ, it shall submit supplementary investigation suggestions by way of a supplementary investigation outline; where it discovers criminal facts that should be filed and investigated by other investigating organs, the corresponding procuratorial organ shall lawfully submit opinions and suggestions for filing the case.

Relevant Legal Provisions

Articles 292 and 293 of the Criminal Law of the People's Republic of China

Articles 16, 113, 288 and 290 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment)

Source: https://www.danyoungcpa.com/spp-guiding-case-240-china/

Articles 1 and 2 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Picking Quarrels and Provoking Trouble (Fa Shi [2013] No. 18)

Articles 557 to 561, 563 and 564 of the Criminal Procedure Rules of the People's Procuratorates (Gao Jian Fa Shi Zi [2019] No. 4)

Articles 4, 5, 7, 8 and 9 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on Issues Concerning Criminal Case-Filing Supervision (for Trial Implementation) (Gao Jian Hui [2010] No. 5)

Disclaimer: This is an unofficial English translation of the original Chinese text, provided for general informational purposes only. It is not an official translation and has no legal force. In the event of any discrepancy, the original Chinese version shall prevail. This translation does not constitute legal advice, and Dan Young Business Consultancy assumes no liability for any reliance placed upon it.