SPP Guiding Case No. 197: Supervision Case on the Parole of Convict Liu Moumou (Unit Crime — Performance of Property-Related Judgment Items)

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

Decided at the 13th meeting of the 14th Procuratorial Committee of the Supreme People's Procuratorate on September 22, 2023; issued on October 16, 2023.

Keywords

Unit crime / parole of the directly responsible person in charge / performance of property-related judgment items / investigation and verification / public hearing

Holding

When handling a parole supervision case involving an offender of a unit crime, the people's procuratorate shall separately examine the performance of the property-related judgment items of the offender individually and of the unit involved in the crime. Where the offender's individual property-related judgment items have been fully performed, and the property-related judgment items of the unit involved in the crime have not been performed or not fully performed but this cannot be attributed to the offender's personal reasons, it generally shall not affect the offender's parole. In addition to substantively examining factors such as the original sentence, criminal circumstances and performance during sentence execution of the offender of a unit crime, it shall also focus on investigating and verifying the actual impact of the offender's parole on the performance of the unit's property-related judgment items, so as to realize the organic unity of the "three effects" in parole case handling.

Basic Facts

The offender, Liu Moumou, male, born in August 1970, with his registered residence in Qingyang Town, Zouping City, Shandong Province, and the actual controller of three companies including a Shandong industrial limited company before the case.

In order to relieve capital pressure, personnel of three companies including a Shandong industrial limited company forged false industrial goods sales contracts, modified the companies' financial statements, concealed the true financial situation, and obtained loans and bill acceptances from banks by fraud amounting to RMB 54 million (before the judgment, RMB 8.7 million of bank loans had been repaid). On April 28, 2019, the three companies including a Shandong industrial limited company were sentenced by the People's Court of Zouping City, Shandong Province to a total fine of RMB 110,000 for the unit crime of fraudulently obtaining loans and bill acceptances, and the illegal gains of the three companies were ordered to be recovered; Liu Moumou, as the directly responsible person in charge of the unit, was sentenced to fixed-term imprisonment of four years and one month plus a fine of RMB 60,000, with the term ending on February 26, 2022. On June 4, 2019, Liu Moumou was delivered to Luzhong Prison in Shandong Province (hereinafter referred to as "Luzhong Prison") to serve his sentence.

Procuratorate Performance of Duties

Discovery of clues. On September 9, 2020, the People's Procuratorate of the Suburban Area of Zibo City, Shandong Province (hereinafter referred to as the "Zibo Suburban Area Procuratorate") received petition materials from Lin Moumou, the wife of the offender Liu Moumou, requesting the procuratorial organ to supervise Luzhong Prison to propose parole for her husband Liu Moumou. After communicating with the prison, the Zibo Suburban Area Procuratorate learned that Lin Moumou had previously also reflected to the

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prison multiple times her hope of applying parole to Liu Moumou, but the prison had not proposed parole for him. In order to ascertain whether Liu Moumou satisfied the conditions for parole, the Zibo Suburban Area Procuratorate decided to carry out investigation and verification.

Investigation and verification. In order to ensure the accuracy of the supervision opinions, the Zibo Suburban Area Procuratorate focused on carrying out the following work: First, it strengthened communication and identified the focus of the dispute. It learned respectively from Luzhong Prison and the Intermediate People's Court of Zibo City, Shandong Province that both units held that, because the property-related judgment items of the enterprises actually controlled by Liu Moumou had not been fully performed, applying parole to Liu Moumou might involve risks. Second, it carried out investigation and verification, and all parties reached consensus. Around the focus of the dispute, the case-handling personnel held discussions with some employees of the enterprises involved, retrieved the asset assessment report of the enterprises actually controlled by Liu Moumou, visited the enterprises actually controlled by Liu Moumou and the victim bank on site, and verified the loan repayment ability and social impact of the enterprises actually controlled by Liu Moumou. Upon investigation and verification, the enterprises actually controlled by Liu Moumou had operated well before the case, providing more than 600 jobs and achieving sales revenue of RMB 6 billion; their existing assets were RMB 62.3 million (including office buildings, nursery stock and other assets), and the relevant assets of the units involved in the crime had been lawfully investigated and controlled by the people's court to perform the corresponding property-related judgment items, but because they could not be immediately liquidated, the property-related judgment items had not yet been fully performed. After the case occurred, Liu Moumou's wife Lin Moumou actively submitted materials on the company's asset status and repaid part of the interest; the bank issued a letter of forgiveness, hoping that Liu Moumou would be paroled as soon as possible to operate the company; Liu Moumou himself expressed that after release he would conscientiously operate the company and repay the fraudulently obtained loans as soon as possible. Third, it comprehensively examined and assessed and carried out substantive examination. Through review of prison file materials and court case file materials, it was ascertained that Liu Moumou had the circumstance of voluntary surrender, had provided the court with an asset assessment report exceeding the amount of overdue loans, and obtained the forgiveness of the bank involved; during his sentence in prison, he admitted guilt and repented, observed laws, regulations, prison rules and discipline, received education and reform, had no record of punishment, received three commendations and rewards, and fully performed the property penalty during the execution period; the community correction institution carried out a social investigation and assessment of Liu Moumou and determined that he had no social danger and no adverse impact was found on the community where he resided. Fourth, it carried out a procuratorial hearing to promote fairness through openness. On November 20, 2020, the Zibo Suburban Area Procuratorate invited legal experts, lawyers and private entrepreneurs to attend a hearing and publicly solicited opinions from all sectors of society. All parties held that applying parole could better help Liu Moumou return to and serve society, and give full play to the positive role of the paroled offender in the performance of the property-related judgment items of the unit involved in the crime.

Supervision opinions. The Zibo Suburban Area Procuratorate held that applying parole to Liu Moumou could promote the enterprise to resume production and operation and better help the enterprise perform its property-related judgment items. On December 15, 2020, it submitted to Luzhong Prison a procuratorial opinion proposing parole for Liu Moumou in accordance with law. Luzhong Prison adopted the procuratorial opinion and, on January 18, 2021, proposed to the Intermediate People's Court of Zibo City that Liu Moumou be granted parole.

Supervision result. On January 27, 2021, the Intermediate People's Court of Zibo City ruled in accordance with law to grant Liu Moumou parole, with the parole supervision period ending on February 26, 2022. After his parole, Liu Moumou conscientiously observed the relevant provisions of community correction, actively cooperated with the court in the execution of the property-related judgment items of the unit, and invested more than RMB 900,000 in one of the companies involved, a Shandong ecological industrial limited

company, and employed more than 60 people, enabling the enterprise to resume production and operation and avoiding greater adverse impact on the performance of the property-related judgment items by the unit involved in the crime due to business stagnation and asset shrinkage.

Guiding Significance

(1) Where there are property-related judgment items in an effective judgment of a unit crime that have not been performed or not fully performed, and this cannot be attributed to the offender's personal reasons, it generally shall not affect the application of parole to the offender individually. When handling a parole supervision case involving an offender of a unit crime, the people's procuratorate shall separately examine the performance of the property-related judgment items of the offender individually and of the unit involved in the crime. Where the offender has performed his individual property-related judgment items, has low subjective malignancy, has obtained the victim's forgiveness and actively assists in the performance of the unit's property-related judgment items, it is inappropriate to use the performance of the property-related judgment items of the unit crime as a factor restricting the application of parole to the offender individually. Where there is truly evidence proving that the offender abused his dominant position over the company or the independent status of the company as a legal person to conceal, transfer or intentionally damage property, or transferred property without compensation or at an obviously unreasonable low price, thereby hindering the unit's performance of its property-related judgment items, the offender shall not be determined as having genuine repentance and parole shall not be applied.

(2) When handling a parole supervision case involving an offender of a unit crime, the people's procuratorate shall focus on investigating and verifying the social impact after the offender's parole, so as to realize the organic unity of the "three effects." In handling parole cases of offenders involved in unit crimes, the people's procuratorate shall, in addition to examining whether the offender satisfies the statutory conditions for parole, also focus on examining whether the offender's parole will have an adverse impact on the unit's performance of its property-related judgment items, whether it will affect social security and stability, and so on. It shall give full play to the value function of the parole system in encouraging offenders to actively reform, minimize the negative impact of sentence execution on the normal production and operation of enterprises, and ensure the organic unity of the political, social and legal effects of case handling.

Relevant Legal Provisions

Articles 81 and 82 of the Criminal Law of the People's Republic of China.

Articles 22 and 23 of the Provisions of the Supreme People's Court on the Specific Application of Law in the Handling of Sentence Reduction and Parole Cases.

Articles 6 and 9 of the Provisions of the People's Procuratorates on Handling Sentence Reduction and Parole Cases.

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