SPP Guiding Case No. 209: Reconsideration and Review Case Concerning the Decision Not to Approve the Arrest of Zhu Mou for Suspected Theft

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Supreme People's Procuratorate Guiding Case No. 209 (Batch 52, 2024)

Keywords

Crime of theft; repeated theft; circumstances markedly minor; reconsideration and re-review of non-approval of arrest.

Holding

Where an actor has committed "repeated theft," but, based on a comprehensive consideration of the objective harm of the conduct, the circumstances and the actor's subjective culpability, the conduct does not carry serious social harm and should not be punished by criminal penalty, it falls under "circumstances that are markedly minor and cause little harm" and is not deemed a crime, and the people's procuratorate shall make a decision not to approve arrest in accordance with law. With respect to reconsideration and re-review cases, the people's procuratorate shall conduct substantive review, and with respect to reconsideration cases, it shall also assign a different prosecutor to handle the matter.

Basic Facts

Criminal suspect Zhu Mou, female, born in March 1968, unemployed.

From July 4 to 6, 2021, while taking walks near a certain workplace in Wuhua District, Kunming City, Yunnan Province, Zhu Mou took home sixteen pots of succulent plants planted by Xie Mou at the entrance of the workplace on three successive occasions. At around 2:00 p.m. on July 7, Xie Mou reported to the police after discovering that the succulent plants he had planted had been stolen. At around 7:40 p.m. that day, when Zhu Mou came to the scene of the incident for a walk and prepared to steal succulent plants again, she was discovered by a security guard and asked to register her identity information, and left the scene after providing false information. On July 15, the police identified Zhu Mou through video surveillance and went to search near her residence. After a neighbor informed Zhu Mou of the situation, she went downstairs and truthfully confessed to the police the fact of stealing the succulent plants, and returned the stolen items to Xie Mou. Upon appraisal, the succulent plants stolen by Zhu Mou were worth RMB 98 in total.

Procuratorate Performance of Duties

(1) Review for arrest approval. On July 15, 2021, the Wuhua Branch of the Kunming Municipal Public Security Bureau opened an investigation into the suspected theft case of Zhu Mou and detained her for criminal detention the following day. On July 26, the Wuhua Branch submitted a request to the Wuhua District People's Procuratorate of Kunming for approval of arrest of Zhu Mou on suspicion of the crime of theft.

The Wuhua District People's Procuratorate of Kunming held upon review that Zhu Mou's three thefts in different time periods should be determined as repeated theft. However, the subject of her theft was of minuscule value, only RMB 98, and she voluntarily returned the stolen property after the incident, recovering the victim's economic loss, which fell under circumstances that are markedly minor and cause little harm, and in accordance with Article 13 of the Criminal Law, was not deemed a crime. On August 2, 2021, the Wuhua District People's Procuratorate made a decision not to approve arrest, served the public security organ with an explanation of the reasons for not approving arrest, and explained the reasons and basis to

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the public security organ in person.

(2) Reconsideration of non-approval of arrest. On August 5, 2021, the Wuhua Branch of the Kunming Municipal Public Security Bureau, holding that Zhu Mou's repeated theft met the provisions of the Criminal Law on the crime of theft, that the decision not to approve arrest on the ground of circumstances being markedly minor and causing little harm was erroneous, and that it could blur the boundary between violations and crimes and cause difficulty in enforcement in practice, requested reconsideration by the procuratorate.

The Wuhua District People's Procuratorate of Kunming assigned a different prosecutor to handle the matter. The prosecutor retrieved and reviewed the case file and interrogated Zhu Mou, conducting comprehensive review around the facts and evidence of the case, the original reasons for not approving arrest and the reasons for reconsideration. Upon review, it held that Zhu Mou's three theft acts met the "repeated theft" under the specific provisions of the Criminal Law, but the general provisions of the Criminal Law require that in judging guilt or non-guilt, whether the conduct carries serious social harm and is punishable by criminal penalty shall be followed. Comprehensively considering Zhu Mou's objective conduct, subjective purpose, the value of the property and the recovery of stolen property and compensation, the conduct fell under circumstances that are markedly minor and cause little harm and was not deemed a crime.

On August 10, 2021, after study by the procuratorial committee, the Wuhua District People's Procuratorate of Kunming upheld the original decision not to approve arrest, and explained to the public security organ in person the reasons and basis for the procuratorate's reconsideration decision.

(3) Re-review of non-approval of arrest. On August 11, 2021, the Wuhua Branch of the Kunming Municipal Public Security Bureau requested re-review by the Kunming Municipal People's Procuratorate. The public security organ held that the judicial interpretation expressly provides that "committing theft three or more times within two years" shall be determined as "repeated theft"; Zhu Mou's repeated petty theft could be assessed as minor circumstances, but did not fall under "circumstances that are markedly minor and cause little harm." Downgrading the criminal conduct of "repeated theft" to an administrative violation breached the boundary between criminal law and administrative law, and would cause difficulty for public security organs in accurately distinguishing administrative violations from criminal conduct when handling repeated theft cases.

At the re-review stage, the prosecutor of the Kunming Municipal People's Procuratorate comprehensively reviewed the file, verified the evidence, and heard the opinions of the public security organ, the lower-level procuratorate and Zhu Mou. Upon review, it held that the Criminal Law's provision on "repeated theft" is intended to punish habitual offenders, while Zhu Mou's conduct was an occasional act driven by petty greed; the stolen succulent plants were worth only RMB 98, and Zhu Mou voluntarily returned the stolen succulent plants after the incident, causing no economic loss to the victim. Zhu Mou's conduct fell under circumstances that are markedly minor and cause little harm and was not deemed a crime, and public security punishment could be imposed on her conduct.

The Kunming Municipal People's Procuratorate decided to uphold the reconsideration decision on non-approval of arrest, and on August 25, 2021 served the public security organ with the document and explained the law and reasoning in person.

(4) Disposition result. On September 6, 2021, the Wuhua Branch of the Kunming Municipal Public Security Bureau revoked the criminal case and imposed on Zhu Mou an administrative penalty of fifteen days' administrative detention. Because Zhu Mou had previously been subjected to criminal detention, the criminal detention period was offset against the administrative detention period.

Guiding Significance

(1) In reviewing and determining a crime, whether the conduct carries the essential characteristic of serious social harm shall be accurately grasped in accordance with law. To accurately distinguish between guilt and

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non-guilt and between violations and crimes, one shall be adept at accurately grasping the substantive legal relationship from the complex legal facts, profoundly comprehending the spirit of the rule of law from specific legal provisions, and realizing fairness and justice in the organic unity of law, reason and emotion. In understanding and grasping the provision on "repeated theft," substantive interpretation shall be upheld, and it shall not be simplistically held that any "repeated theft" shall uniformly be punished as a crime. On the one hand, the principle that "repeated theft" carries harmfulness equivalent to "a relatively large amount, burglary, carrying a weapon for theft, or pickpocketing" shall be followed; on the other hand, the specific provisions and the general provisions shall be understood together, and in accordance with Article 13 of the Criminal Law, the degree of social harm of the conduct and whether it should be punished by criminal penalty shall be further reviewed. With respect to "repeated theft," whether to determine the crime of theft may be comprehensively judged in light of the actor's motive, purpose, time, place, means, target and amount of theft. Where there are circumstances such as repeated theft through destructive means, engaging in theft as a profession, having previously received criminal punishment or administrative punishment for theft and committing repeated theft again, or repeatedly stealing property from disabled persons or elderly persons living alone, the crime of theft shall be pursued in accordance with law. Where there has been repeated theft, but the actor is driven by petty greed and opportunistic taking, stealing a small amount of property of relatively low value, it shall be determined as circumstances that are markedly minor and cause little harm and not deemed a crime.

(2) In handling reconsideration and re-review cases, substantive review shall be conducted. With respect to reconsideration cases, the people's procuratorate shall assign a different prosecutor to handle the matter, pay attention to hearing the opinions of the public security organ, review and re-verify the evidence, and strengthen communication and reasoning, and may organize a hearing where necessary. Where the original decision not to approve arrest is upheld upon reconsideration and re-review, the people's procuratorate shall explain the reasons when serving the public security organ with the reconsideration and re-review decision.

Relevant Legal Provisions

Articles 13 and 264 of the Criminal Law of the People's Republic of China; Articles 90 and 92 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment); Articles 290 and 291 of the Rules of Criminal Procedure for People's Procuratorates (2019 Revision); paragraph 1 of Article 3 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 Theft (Fa Shi [2013] No. 8).

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