SPP Guiding Case No. 211: Reconsideration and Review Case Concerning the Decision Not to Approve the Arrest of Wang Mou for Concealing Criminal Proceeds

Dan Young Business Consultancy — www.danyoungcpa.com

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

SPP Guiding Case No. 211 (Procuratorial Example No. 211)

Keywords

Concealing and disguising criminal proceeds; knowledge; prosecution standard; serious circumstances; reconsideration and review of non-approval of arrest.

Holding

In determining "knowledge" for the crime of concealing and disguising criminal proceeds or the proceeds of crime, a comprehensive judgment shall be made in light of the actor's occupational nature, cognitive ability, the form of the stolen goods, the purchase price and the gains obtained. In handling cases of concealing and disguising criminal proceeds, a people's procuratorate shall, based on the specific facts, circumstances, consequences and degree of social harm, in combination with the nature of the upstream crime and the balance of sentencing between upstream and downstream crimes, comprehensively judge whether to prosecute and whether to determine "serious circumstances." Where a higher-level procuratorate, in handling a review case over non-approval of arrest, finds the lower-level procuratorate's reconsideration decision erroneous, it shall correct it in accordance with the law.

Basic Facts

Defendant Xu Mou, male, born in January 1989, a water-electrician at a construction site.

Defendant Wang Mou, male, born in September 1989, an individual operator of a waste collection station.

From April to May 2021, Xu Mou, working as a water-electrician at an industrial park construction site in Mingguang, Anhui Province, stole scaffolding fasteners from the site on 24 occasions and sold them to Wang Mou, who operated a waste collection station, in 29 transactions. Wang Mou, knowing that the scaffolding fasteners were of dubious origin, nevertheless purchased them at a low price, paying Xu Mou more than RMB 19,700. The victim reported the loss to the police after discovering the theft.

On May 15, 2021, Wang Mou was arrested, and Xu Mou reported to the police upon telephone notification. The public security organ seized 1,201 stolen scaffolding fasteners and returned them to the victim. Upon price determination, the stolen scaffolding fasteners were worth RMB 32,400 in total. Xu Mou subsequently surrendered the illegal gains.

Judgment

Review of arrest. On May 15, 2021, the Mingguang Public Security Bureau opened a case against Xu Mou for suspected theft and, the next day, against Wang Mou for suspected concealing and disguising criminal proceeds, placing both under criminal detention. On May 21, it requested approval of arrest from the Mingguang Municipal People's Procuratorate.

The Mingguang Municipal People's Procuratorate held that Xu Mou committed theft of a relatively large amount and could lawfully be sentenced to imprisonment or heavier punishment, and had social danger. Wang Mou's conduct did not meet the four situations under the first paragraph of Article 1 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Criminal Cases of Concealing and Disguising Criminal Proceeds and the Proceeds of Crime (the

Source: https://www.danyoungcpa.com/spp-guiding-case-211-china/

"Interpretation"); in the absence of clear, specific standards for the second paragraph, it could not determine that Wang Mou's conduct constituted the crime. On May 28, 2021, the procuratorate decided to approve the arrest of Xu Mou and not to approve the arrest of Wang Mou on the ground that he did not constitute a crime. Wang Mou was released that day.

Reconsideration of non-approval of arrest. On May 31, 2021, the Mingguang Public Security Bureau requested reconsideration, arguing that Wang Mou, knowing the scaffolding fasteners were of dubious origin, purchased them 29 times, meeting item (2) of the first paragraph of Article 3 of the Interpretation — "concealing and disguising criminal proceeds or the proceeds of crime ten or more times constitutes serious circumstances" — and should be sentenced to fixed-term imprisonment of three to seven years under Article 312 of the Criminal Law. The procuratorate assigned another procurator to review, and on June 7, upon approval by the chief procurator, decided to uphold the non-approval decision on the same grounds.

Review of non-approval of arrest. On June 8, 2021, the Mingguang Public Security Bureau requested review by the Chuzhou Municipal People's Procuratorate, which assigned a department head to review. The procurator retrieved the full case files and heard the opinions of the public security bureau and the lower-level procuratorate. It concluded that although Wang Mou's conduct did not meet the four situations of the first paragraph of Article 1, whether it constituted a crime should be comprehensively judged under the second paragraph. Xu Mou, the upstream thief, stole property worth RMB 32,400, and the facts had been established and arrest approved; Wang Mou, long engaged in waste collection, purchased at low prices, many fasteners being in whole packages, so it could be determined that he knew the items were criminal proceeds; he had, for illegal gain, purchased continuously and repeatedly at low prices, and the amount far exceeded the pre-amendment standard of RMB 3,000 to 10,000 under the Interpretation, so he was suspected of concealing and disguising criminal proceeds. Considering that Wang Mou truthfully confessed after arrest, voluntarily pleaded guilty and accepted punishment, and was willing to surrender illegal gains, after comprehensive assessment of social danger, the procuratorate, upon approval by the chief procurator, on June 18 rendered a review decision of non-approval of arrest on the ground of no social danger, and explained the reasons to the public security organ in person.

Result. On June 24, 2021, the public security bureau transferred the case for prosecution against Xu Mou for theft and Wang Mou for concealing and disguising criminal proceeds. The procuratorate held that Wang Mou was suspected of concealing and disguising criminal proceeds but did not constitute "serious circumstances." The determination of "serious circumstances" should not be made purely formally; Wang Mou, based on a general intent of concealing and disguising, purchased the same type of stolen goods from the same victim entity multiple times within a short period, and should not be mechanically determined as "serious circumstances." On July 23, 2021, the procuratorate prosecuted both. On August 19, 2021, the Mingguang Municipal People's Court sentenced Xu Mou to one year and six months of fixed-term imprisonment and a fine of RMB 18,000 for theft, and sentenced Wang Mou to seven months of fixed-term imprisonment and a fine of RMB 8,000 for concealing and disguising criminal proceeds. Neither appealed, and the judgment became effective.

Reasoning

(1) In handling cases of concealing and disguising criminal proceeds, a comprehensive review shall be conducted based on the specific circumstances, consequences and degree of social harm, as well as the nature and harmful consequences of the upstream crime, to decide whether to prosecute. In determining "knowledge," a comprehensive judgment shall be made in light of the actor's occupational nature, cognitive ability, the form of the stolen goods, the purchase price and the gains obtained. In determining "serious circumstances," the number of times of purchasing stolen goods shall not be used as the sole criterion; rather, a comprehensive judgment shall be made in light of the content of the actor's intent, the number of purchases, the value of the stolen goods, the duration, the objects of the crime, the harmful consequences, and the balance of sentencing between upstream and downstream crimes.

(2) Where a higher-level procuratorate, in handling a review case, finds the non-approval of arrest or reconsideration decision erroneous, it shall correct it in accordance with the law. For cases for which the public security organ requests review, the procuratorate shall comprehensively review whether the facts determined and the law applied in the non-approval decision are correct, whether the handling was appropriate, whether statutory procedures were violated, whether the documents were accurate, whether there were errors or omissions in cited legal provisions, whether the reasoning was adequate, and whether reconsideration raised new facts or evidence. Where the public security organ's grounds for review are correct, they shall be adopted in accordance with the law to correct the improper decision of the lower-level procuratorate.

Relevant Legal Provisions

The first paragraph of Article 312 of the Criminal Law of the People's Republic of China.

The first paragraph of Article 67, the first and second paragraphs of Article 81, and Article 92 of the Criminal Procedure Law of the People's Republic of China (as amended in 2018).

Article 86, the first paragraph of Article 128, Article 134, Article 290 and Article 291 of the Rules of Criminal Procedure of People's Procuratorates (as amended in 2019).

The second paragraph of Article 1 and item (2) of the first paragraph of Article 3 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Criminal Cases of Concealing and Disguising Criminal Proceeds and the Proceeds of Crime (Interpretation No. 11 [2015], amended April 7, 2021, effective April 15, 2021).

Disclaimer: This translation is provided for informational purposes only and is not an official translation. In the event of any discrepancy between this English version and the official Chinese text, the official Chinese text shall prevail. This translation does not constitute legal advice.