

**IN THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE**

Criminal Motion No. of 2012

In the Matter of Criminal Case No. 26 of 2008 – Public
Prosecutor-vs-Yong Vui Kong

And

In the matter of Criminal Appeal No. 13 of 2008 – Yong
Vui Kong –vs-Public Prosecutor

And

In the Matter of Article 9 and 12 of the Constitution of
the Republic of Singapore

And

In the Matter of Supreme Court Judicature Act cap 322

And

**In the Matter of Yong Vui Kong
(Fin No. G0623288X/Malaysian)**

... Applicant

v

Public Prosecutor

... Respondent

AFFIDAVIT

.....
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Dated this day of January 2012

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I. **Yong Vui Kong** (FIN No. G0623288X/Malaysian) of care of Cluster A, Changi Prison Complex, 982 Upper Changi Road, Singapore 507709, do solemnly and sincerely affirm and say as follows:-

1. I am deeply disturbed to learn that under the law of Singapore, I may be put to death imminently for having trafficked 47.27g of heroin while the person, one Chia Choon Leng of NRIC: S1719705C was the one;

- (a) who gave me the parcels containing what turned out to be illegal drugs and
- (b) who, as my evidence showed, gave me detailed instructions on when and where to go, what to do, who to see, what not to do, and was in every respect a person who employed me, in return for the money I needed
- (c) who would, unlike me, have known for sure that they were drugs, and who kept this information from me
- (d) who was my boss as appears from my statements to the Police (Criminal Appeal No. 26 of 2008: Exhibit P-86, pp. 162-166; Exhibit P-91 pp, 192-5. Annexed herewith and marked "YVK-2" as a copy of the said exhibits), where I frequently mention my boss when accounting for my actions during my trial and he was also identified by me to the police from a photograph (Criminal Appeal No. 26 of 2008, Day 3 pp. 21-45. Annexed herewith and marked YVK-1 as a copy of the said exhibits).
- (e) who is also referred to as my boss by the prosecutor as appears from the cross examination by the Prosecution (Criminal Appeal No. 26 of 2008, Day 3 pp. 21-45),
- (f) who has not been prosecuted for any offence at all.

2. I respectfully put before this court, the above facts as evidence that the prosecutor has displayed inequality to me in breach of Article 12(1), by prosecuting me for a capital offence at the same time he has not prosecuted a person in respect of whom, on the evidence I have given been an unequal if not greater degree of responsibility of the crime, giving rise to the

charges laid against us both but withdrawn against him. I claim that this is unfair discrimination against me.

3. Although I stand convicted of an offence of trafficking in drugs in an amount which attracts a capital offence, if I had been tried jointly with Chia, he would have been seen by the court to be the controller and I would have been seen by the court as a mere courier. In that event it is possible that;

- (a) the prosecutor might have decided to treat me more leniently in return for my cooperation in giving evidence against a co-offender or in providing intelligence;
- (b) the prosecutor or the Court or both might have viewed Chia's activities as being more significant in terms of the potential harm caused to society. In comparison, I was a mere courier. Thus, from a policy perspective, Chia could be said to have been more culpable an offender than me in the context of combating drug trafficking in Singapore, and this might have impacted on the way I was charged, tried and convicted.
- (c) The prosecutor might have entertained the possibility of showing some degree of compassion upon me as the younger and less culpable offender.

4. My complaint is not that Chia has escaped prosecution. My complaint is that the Attorney General has prosecuted me for a capital offence although he has felt unable to prosecute Chia for any offence at all. My complaint is that the Attorney- General has felt unable to prosecute Chia even though we were both apprehended in Singapore by the Singapore police on account of the same episode involving the same activities on the same date with the same third parties centered around the same parcel. My

complaint is that if the Attorney –General felt unable to prosecute Chia in the circumstances, he should have felt unable to prosecute me and my prosecution (for a capital offence) on those same facts can only be described as treatment which is not equal within the meaning of Article 12(1).

5. I would not have been able to bring this complaint if Chia had been charged with drug trafficking arising out of the same facts. In that event however, I would have had available to me various lines of defence and mitigation and I would possibly have enjoyed procedural, evidential, tactical and other forensic opportunities as a less culpable co-accused then was the case being a sole defendant facing a capital charge.
6. I do not understand how it can be possible for the Attorney General to prosecute me in such circumstances given that on all the evidence before him, he is unable to prosecute Mr Chia the mastermind.
7. I do not understand why if there is a difficulty of evidence in relation to Chia, there was not also a difficulty of evidence in relation to me.
8. I do not recall having been asked by the Prosecutor to assist in relation to any difficulty of evidence perceived in relation to Chia. I do fear the possibility of endless repercussions upon my family in Malaysia if it should become known that I have been the cause of Chia being put to death on account of his actions. I do not wish to die but neither do I wish to be the cause of Chia's death and I feel in an impossible dilemma. However I also am confused as to why I have been charged with a capital offence on evidence, which the Attorney General apparently considers to be a source of difficulty as regards the prosecution of Chia when he and I were similarly placed in relation to all the material events.

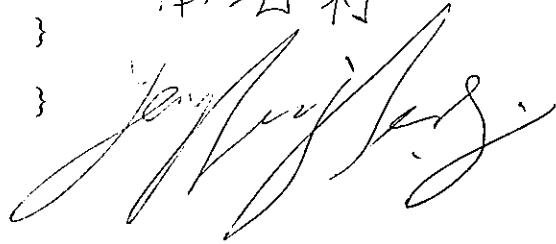
AFFIRMED by the abovenamed }
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Yong Vui Kong }
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On this 27 day of January 2012 }
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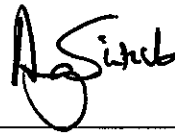
Interpreted by: Ang Sin Teck }
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南地利



In Mandarin

Before me,



A COMMISSIONER FOR OATHS



This Affidavit is filed on behalf of the Applicant