

Conviction and Sentencing of Violent Crimes on Campus

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Abstract: Violent crime is a common type of campus crime which makes relatively large social harm. Because the victims are usually minors, this kind of crime would make serious physical and mental impacts on victims. This crime is a fighting and preventing focus. From the perspectives of conviction and sentencing, this paper, aiming at the several common types of violent crimes and combining with People's Court Guidance on Sentencing, On the Norms of Sentencing Procedures, and Supreme People's Court Guidance on Implementation of the Criminal Policy of Tempering Justice with Mercy, sums up how to convict and sentence the crime according to various sentencing circumstances, suiting punishment to crime.

Keywords: Conviction; Sentencing; Violent Crimes on Campus

1. Introduction

In the recent 20 years, numbers of campus poisoning cases have happened in China, such as "TL" poisoning case in Beijing University, thallium poisoning case in China University of Mining and Technology, and the case in Fudan University in 2013 April where the post-graduate student Huang Yang was poisoned to death. The criminal and the victim are both students in school. They are classmates or roommates. The common characteristics of these cases in the objective aspects is that aiming at specific person, cast dangerous substances to commit intentional homicide. These acts should be identified as intentional homicide or intentional injury. According to the traditional view, it is difficult to determine to the nature of the case where casting dangers substances to make 3 to 5 people be killed. With using dangerous methods to murder being identified as crime of intentional homicide or the crime of intentional injury, it will make no difficulties in determining the nature of the case and is conducive to deal with the problems in the application of the Article 2 in Clause 17 of the criminal law. Also, it is conducive to unify the understanding and treatment of the aggravated consequential offence. And it needs to pay attention to distinguish the crime of intentional homicide and the crime of intentional injury. According to a single theory, homicide act certainly contains injury act, and intentional homicide certainly includes intentional injury. When an act is not made sure to be an intentional homicide or an intentional injury, it can be identified as a crime of intentional injury according to a single theory. When identify the crime of intentional homicide or intentional injury a path from the objective to the subjective should be taken. In the situation where the behavior has caused people to death, or the behavior only causes injury without death but making the urgent danger of death,

this act should firstly be identified as a homicide, and then it needs to be determined whether the perpetrator has a homicide intention. If there is no intention to kill, it should be judged whether the perpetrator has the intention to hurt. As to whether the perpetrator has the intention to kill, it needs to be identified based on the objective facts. In the above poisoning cases, the fact that whether the poisoning act belongs to intentional homicide or intentional injury and the subjective psychology should be judged from the following aspects: (1) the kind of hazardous substances are used by the perpetrator; (2) dosage of dangerous substances in the act; (3) the time, place and circumstance of the crime; (4) whether the perpetrator has rescued the victim; (5) the relationship between the perpetrator and the victim.

On the sentence of the crime of intentional homicide, the case should be comprehensively evaluated, which is conducive to future reduction of the terms of the death penalty. On the sentence of the crime of intentional homicide, the case should be comprehensively evaluated, which is conducive to future reduction of the terms of the death penalty. The judicial organs should correctly distinguish between homicide with aggravated circumstances and that with slender circumstances in order to accurately select the appropriate legal punishment. The intentional homicide with aggravated circumstances mainly include: homicide in cruel means, reckless homicide, and homicide with serious consequences. Intentional homicide with slender circumstances mainly include: homicide on the spot because of indignation, homicide because of being long-term persecuted by the victim, homicide for the "justice" and so on. During sentencing, improper ideas should be abandoned, especially the old concept of "he who murders pays the forfeit of his life". All the circumstances should put into consideration to make correct

evaluation on the seriousness of the crime and the possibility recommitting the crime of the perpetrator as well as to give the criminal an appropriate penalty. And those intentional homicides which caused by the intensification of civil conflicts such as marriage, family, and neighborhood disputes should be distinguished from other intentional homicides. And the application of the death penalty must be very cautious. If the victim has obvious fault or direct responsibility for intensifying the conflicts, or the defendant has a legal attenuating circumstance, a death penalty should not sentenced.

As for penalty of the crime of intentional injury, attempted injury should be paid attention to in the choice of statutory sentence. In the cases where the fenson had serious injury intention, but did not cause any harm, it should be recognized as the attempted crime of intentional injury. And it is suitable for application of the Article1 in Clause234 of statutory sentence as well as the application of the general provisions on the attempters, while it is not suitable for the application of the former part of Article2 in Clause234 of the statutory sentence, otherwise it will cause the uneven sentencing; for the case where the perpetrator had serious injury intentions but only caused a minor cases without serious injuries, it is better to be recognized as a crime of intentional slight injuries, rather that attempted serious injury. And the Article1 in Clause234 of statutory sentence can be directly applied in the case, while the general provisions on the attempters are no longer applied.

In the frequent cases of rape on campus in recent years, the victims are usually the girls under the age of 14. Criminals often take advantage of the opportunities of often getting close to some young girls, and take the means of deceiving or intimidating to have sex with the young girls. If the perpetrator lures some victims to the hotel, and threatens, coerces or uses other means to force the girls into submission, even if the girl does not have a fierce resistance, the perpetrator should be identified as committing rape. In practice, after the criminal raped the young girls, in order to reduce punishment, he will argue that his behavior is whoring with a girl under the age of 14. So how to define the crime of rape and whoring is very important. As mentioned earlier, whoring behavior takes the young girls' initiative, voluntary prostitution or prostitution based on some reasons for prostitution activities as a precondition. Some people have proposed to abolish the crime of whoring with a girl under the age of 14, and think this crime is not conducive to the protection of minors, making it easy to make an under-punishment and failing to achieve the goal of punishment.

After the crime of rape is identified, the next program is sentencing. First step is to determine sentencing starting point. According to the Clause6 of Supreme People's Court Guidance on Implementation of the Criminal Policy of Tempering Justice with Mercy, "justice" mainly

refers to those criminals, who have committed the crimes which is very serious and has great social harm and shall be sentenced to maximum penalty or the death penalty, should be firmly sentenced to maximum penalty or the death penalty; those defendants who have great social harm or statutory and discretionary aggravating circumstances, as well as the subjective deep malignant or danger to other people, should be severely punished according to law. In the trial through reflecting the requirements of "justice" policy, effectively deter criminals and social instability to effectively achieve the purposes of stemming and preventing crime. According to the requirements related to punish rape and other serious violent crimes and crimes that seriously affect people's security sense in Clause7 of Supreme People's Court Guidance on Implementation of the Criminal Policy of Tempering Justice with Mercy, determine reasonable sentencing starting point in the sentencing range of starting point to lay a solid foundation of a fair amount of penalty. Secondly, on the basis of the sentencing starting point, according to the number of raped people, the times of the rape, the number of casualties and other factors which affect constitution of the crime, the amount of penalty can be increased to determine the baseline sentence. Finally, according to the sentencing circumstances, adjust the baseline sentence and determine the declaring punishment.

2. The Conviction and Sentencing of Crimes of Violence Property Violation Against Minors

In the conviction of robbery in violent crimes, if the perpetrator after robbing of property kills others in order to get rid of the witness, robbery and intentional homicide are convicted, and the concurrent punishment for several crimes can come into implemented. If the perpetrator kills for other reasons with causing death, then produces the intention of illegal possession of property and obtains property, should be identified as committing the crime of intentional homicide and embezzlement. For the purpose of illegal possession, using violence on the spot to kill the victim to seize the property is identified as robbery. According to Replies on How to Determine the Conviction of the Intentional Homicide Case in the Process of Robbery issued by the Supreme People's court on May 23rd, 2001, "The perpetrator who has made intentional homicide in order to of rob property, or in the process of robbery, in order to suppress the resistance of the victim commit intentional homicide should be convicted as committing robbery. And the perpetrator, who after using violence or coercion to illegally seize the victims or force the victim to leave the daily life and continues to blackmail the victim, can only be identified as robbery. On the Applied Laws in Trying Cases of Robbery and Forcible Zeizure issued by The Supreme People's court on June

8th, 2005 points out: "The perpetrator who robs the victims of their property during the process of kidnapping, is committing the crimes of kidnapping and robbery, and should be sentenced as committing a felony. And those who have made one of the consequences between robbing of property or causing slight injury of others are all belong to committing robbery; those who do not obtain property and do not cause injury of others belong to committing attempted robbery. The establishment of committing a common robbery crime requires a causal relationship between obtaining property and the previous violence or coercion behavior. Among the eight kinds of sentencing circumstances prescribed in Clause 263 of the criminal law in addition to the aggravated circumstance of "robbery causing serious injury or death", the rest of the seven kinds of sentencing circumstances also have the problem of being accomplished or attempted. And those cases which belong to the attempted robberies shall be sentenced according to the regulations about the aggravated circumstances in criminal law and combined with the principle of attempters. The perpetrator who has committed assaulting, raping or other criminal acts, and robbed other people's property on the spur of the moment when the victim loses consciousness and can not resist, should be sentenced with a combined punishment for the specific crime as well as robbery. Under the situation of the victim's loss of consciousness or not noticing, the perpetrator, who has committed the crime of intentional homicide and taken the property of others on the spur of the moment, should be sentenced with combined punishment for the specific crime he/she has implemented and the crime of embezzlement.

On sentencing the crime of robbery, Guidance on Sentencing prescribes that robbery for one time, can determine the sentencing starting point in the range from three years to five years in prison. And with one of the eight aggravated circumstances, the sentencing starting point can be determined in the range from ten years to twelve years. The determination of the starting point should reflect the degree of social harm of every kind of crime, and be in accordance with the economic development level, the public security situation, as well as the need for criminal policy. As the Guidance on Sentencing only applies to the case where the criminal is sentenced with set term of imprisonment, therefore, when the criminal commits robbery with several circumstances mentioned above, the judge should first through a qualitative analysis determine the appropriate kind of punishment to each of the case. And only for those cases where a set term of imprisonment is applied, an appropriate sentencing starting point can be determined according to the Guidance on Sentencing. Then based on the sentencing starting point and combined with the fact of the case, determine the baseline sentence: the specific circumstances of increasing the amount of penalty, include: robbery times,

robbery amount, disability and death consequences of robbery; if with serious circumstances, the amount of the penalty can be increased appropriately according to the robbing means; according to the damage degree of robbing of specific property, amount of penalty can be increased. And according to various facts that influence the sentences such as the social harm degree of the crime and the subjective malignant or harm degree for others of the defendant, the baseline sentence can be adjusted. And the discretionary circumstances include: using knives and other equipment; premeditated, fled or gang robbery; taking the students on campus as the robbery objects and so on.

The crime of robbery directly uses violence on the stuff, and does not require the direct use of violence on the victim for suppressing the resistance. For the robber by driving a motor vehicle, On the Applied Laws in Trying Cases of Robbery and Forcible Seizure issued by The Supreme People's court on June 8th, 2005 points out: seizing others' property by driving a motor vehicle and non motor generally shall be sentenced seriously as crime of forcible seizure. But with one of the following circumstance, it shall be convicted and sentenced as robbery:

(1) by driving a vehicle, force, crowd, or knock down others to exclude others' resistance, and seize the opportunity to take property; (2) while robbing property by driving vehicle, because the victim does not let go of the property, rob property by strong pulling or dragging; (3) though the perpetrator knows driving vehicle to forcibly seize the property of others will cause casualties consequences, he/she continues to forcefully seize the property and leave alone with causing the consequences more serious than minor injuries of the holder of the property.

As for the sentencing of the crime of forcible seizure, the Guidance on Sentencing prescribes, "With the amount reaching to a relatively large starting point, sentencing starting point can be determined within the range from three-month detention to one-year imprisonment". And with the amount of forcibly seized public or private property reaching to a huge starting point, or with other serious circumstances, the sentencing starting point will be within the range from three to four-year imprisonment. And if the amount of the forcibly seized public or private property has reached to a particularly large starting point or the case has other serious circumstances, the sentencing starting point will be within the range from ten to twelve-year imprisonment. The baseline sentence of the crime of robbery is based on the determination of the starting point of sentencing, and determined according to the amount of penalty which should be added up. And the specific circumstances include: the amount of forcible seizure, forcible seizing means, and the damaging consequences to the people. Then adjust the baseline sentence and the circumstances which will increase the baseline sentence include: using traveling motor vehicles to com-

mit forcible seizure; seizing the stuff such as disaster relief, rescuing stuff, flood controlling equipments and funds and supplies for preferential treatment, poverty, immigration, and relief; committing forcible seizure more than three times within one year. And the circumstances which will decrease the baseline sentence include: juvenile crime which belongs to a first crime or the instigated crime; initiative surrendering, disgorging all ill-gotten gains or making restitution; being forced to take part in the robbery, and having no spoils or winning fewer spoils.

3. Crimes of Disturbing Public order Aiming at Minors

Another common type of violent crime on campus is the crime of picking quarrels and provoking troubles. And its objective behavior has the following circumstances: arbitrarily beating others with vicious nature; chasing, intercepting, abusing, threatening to others with vicious nature; forcibly seizing and demanding, or arbitrarily damaging and occupying of public or private property with serious circumstance; and stirring up troubles in the public places and causing serious disruption of public order. In the judicial practice, it cannot rely on the judgment that whether the behavior is motivated from rogue to distinguish the crime and the related crimes, but should be based on the publishing principle of imaginative joiner. For example, arbitrarily beating others causing minor injuries is according with the constitution of crime of intentional injury crime as well as the crime of picking quarrels and provoking troubles. It should be sentenced for the most serious one of the committed crimes as an imaginative joiner of offense. Chasing behavior may also lead to the crime of negligence causing serious injury, and crime of negligent homicide; intercepting behavior may lead to commit the crime of illegal detention; abusing others which causes serious results, may also lead to commit the crime of insulting. In these cases, the criminals should all be sentenced for the most serious one of the committed crimes. Forcibly seizing of demanding a relatively large amount of property, is entirely possible according with the constitution of the crime of extortion as well as the crime of picking quarrels and provoking troubles. And it should be sentenced for the most serious one of the committed crimes; if the actor forcibly seizes or occupies the property of others by assembling a crowd, it is entirely possible according with the constitution of the crime of picking quarrels and provoking troubles and crime of assembling a crowd to rob which should be sentence for the most serious one of the committed crimes as the imaginative joiner of offenses. Intentionally damaging public or private property may constitute the crime of intentional destruction or damage of properties or the crime of picking quarrels and provoking troubles. Picking quarrels and booing in the public places, which caus-

es serious disruption of public order, may both constitute the crime of picking quarrels and provoking troubles, and the crime of assembling a crowd to disturb public order and traffic order. The behavior of picking quarrels and provoking troubles which causes the death of people, may commit either the crime of intentional homicide or the crime of negligent homicide. It should also be sentenced for the most serious one of the committed crimes.

On sentencing of the crime of picking quarrels and provoking troubles, first step is to determine sentencing starting point in the range of statutory penalty. Guidance on Sentencing prescribes that if behavior constitutes crime of picking quarrels and provoking troubles, sentencing starting point can be determined within the range from three-month detention to one-year imprison. And the specific constitution of the crime should be comprehensively taken into consideration. And the objective aspect of the crime of picking quarrels and provoking troubles should be taken into consideration, such as the motive and the means of the crime. In the areas where social security is relatively poor, based on the criminal policy of cracking down the crimes which jeopardize the social order, a higher sentencing starting point can be set; in the areas where the social security and the social order is good, a relatively low sentencing starting point can be set. The factors which have been taken into consideration in the process of determining the sentencing starting point shall not be used as the reference of determining and adjusting the baseline sentence, in order to avoid the repeated evaluation. After determining the baseline sentence, the circumstances which can increase the amount of sentences include: the provoking times, the consequences of the crime and so on. At last, adjust the baseline sentence and determine the declaring sentence. Play the judge's right of autonomous judgment and discretion as far as possible while making a comprehensive evaluation of the whole case. What needs to be paid attention to are those circumstances which have taken into consideration during determining the baseline sentence should no longer be regarded as circumstances of adjusting baseline sentence. And for those which are considered as sentencing circumstances of the crime of picking quarrels and provoking troubles, but not prescribed in the Guidance on Sentencing can be judged within the amplitude of accommodation of 10%. For example, mechanical stir up trouble, can consider to some extent severely; armed picking quarrels and provoking troubles can be sentenced with a heavier penalty to some extent; the behavior of picking quarrels and provoking troubles which has caused traffic congestion or public disorder also can be sentenced with a heavier penalty. With the acts of initiative apologizing to the injured party, and actively treating and rescuing the wounded, the sentences can be reduced to a certain extent; the provoking behavior which are caused by emotional control due to misunderstanding

are different from other circumstances and can have a certain reduction in sentencing. The important principle in the standardization of sentencing, which refers to the principle of prohibition of repeated evaluation, should be grasped. If the circumstances have been taken into consideration in the process of determining the sentencing starting point, they should not be considered in the subsequent steps. The circumstances which have been considered in the determination of the baseline sentence can not be considered in adjusting the baseline sentence and determining the declaring sentence. As to choose what circumstances in each stage of sentencing, in the stage of determining the sentence starting point, only the basic facts that constitute the crime are considered; in the stage of determining the baseline sentence, other sentencing circumstances which have close relationship with the constitution of crime are considered, especially the factors which are be quantified, such as the amount of crime, the times of the crime and so on; in the stage of regulating the baseline sentence, weigh factors such as the consequences, and means of the crime. The above analysis of convicting and sentencing the violent crime on campus is carried out under the condition that the general situation where the victim is student in school. And if the perpetrator is minor, the capacity of criminal responsibility should be considered during sentencing. Guidance on Sentencing prescribes that: for juvenile crime, the circumstances such as the age of minor when he/she commits the crime, the cognitive ability of the crime, whether being as a first offender, repenting performance, personal growing experience and normal performances shall be considered to give lenient punishment. In the process of determining lenient proportion of the minor criminal, the above circumstances should be comprehensively taken into consideration to determine the adjustment ratio. In general, with smaller subjective malignant reflected by the criminal motive and purpose, younger age, better repentance, slower growth, shallower experience, poorer cognitive ability, better normal performance, and being as a first offence, lenient proportion will be larger, whereas the smaller. Specifically speaking, in the process of handling a case, the judge in order to determine a reasonable lenient proportion of juvenile offender, must consider the following factors: the motive and purpose of crime, the age when committing the crime, repenting performance, personal growing experience, normal performances and other factors. What should be paid attention is that those factors, which have been considered as sin-

gle sentencing circumstance, cannot be regarded as judgment factors which determine lenient proportion of the minor crime.

4. Conclusion

Violent crime on campus is a serious criminal type with its object usually being as students and minors who are the protecting objects of criminal law of the countries in all over the world. Special chapters are set up in criminal laws of many countries to regulate the crimes against minors with severe punishment. In the judicial practice, for the violent crime against minors, the criminal policy of tempering justice with mercy should be implemented. And the crime which is extremely serious and ought to be sentenced to death should be sentenced with the death penalty. In sentencing, if it is should be sentenced with a set term of imprisonment, measure correct sentence on the criminal according to the Guidance on Sentencing. First according to the basic crime constitution, determine the sentencing starting point within statutory sentence. Then according to the related circumstances which constitute the crime, determine the baseline sentence. At last, according to other sentencing circumstances, adjust the baseline sentence and determine the declaring sentence. And the determination of the declaring sentence should be strict accordance with the laws, and can not exceed the limit prescribed by the laws. As for the crime aiming at minors, the object and means of the crime, the times of crimes, and the social harmfulness should be used as the basis to increase the amount of penalty. Crack down effectively these kinds of crimes by criminal penalty. And the violent crimes on campus that are committed by minors, should be convicted and sentenced according to criminal motive and purpose, the age when the perpetrator commits crime, repenting performance, personal growing experience and normal performance.

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