

Khir Toyo gets 12-month prison sentence

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The Federal Court today slapped a one-year prison sentence on former Selangor menteri besar Dr Mohd Khir Toyo after dismissing his appeal against a graft conviction last week.

The apex court also rejected the 50-year-old dentist's offer to do community service by providing free dental service for the poor in lieu of a jail sentence.

"In the final analysis, the sentence should reflect the severity of the offence," said Chief Judge of Malaya Zulkefli Ahmad Makinudin.

Khir begins his jail sentence from today at the Kajang prison.

Justice Zulkefli noted that Khir's counsel Muhammad Shafee Abdullah had argued that a custodial sentence should be the last resort as his client was a first-time offender and no violence was involved.

"It is trite that what is important is of public interest and it (the sentence) should not be altered if it is not manifestly wrong in the sense of it being illegal or unsuitable to the proved facts and circumstances or manifestly excessive or inadequate

"The appellate court (Federal Court) should be slow in disturbing the findings of the courts below. The court has discretion to be lenient and in the public interest to do so," said the judge.

However, Justice Zulkefli said community service would be inadequate as it is for youthful offenders.

Fine will not send the message

The judge said that a sentence must reflect the seriousness or triviality of the offence.

"As a public servant and chief executive of the state, Khir took a valuable thing for a consideration which he knew was inadequate from a person whom he knew was concerned with him as a public servant in his official functions.

"The appellant (Khir) took advantage of his official position. One purpose of Section 165 of the Penal Code is to prevent that sort of corruption. Corruption in all manner and form cannot be condoned. A fine would not send that message.

"Neither would community service. The instant offence which is destructive to public confidence in the government was not trivial in nature.

"Imprisonment is the right and proper punishment," he added.

Justice Zulkefli also said the court cannot agree with Shafee's submission of wanting Khir to pay the differential sum of the said property or subject matter.

"In the present case, there was a chargee bank with rights of a chargee, not an owner. There was an encumbrance on the said land. We therefore unanimously uphold the order of forfeiture of the said land but subject to the charge, if any," he said.

Prior to sentencing, Muhammad Shafee complained about two articles in The Sun daily which he claimed were prejudicial to his client.

One of the articles, published on Sept 25, was penned by veteran newsman R Nadeswaran, while the other, which appeared yesterday, did not have a byline.

Justice Zulkefli said the court took note of the articles but denied that the judges were influenced by the articles or the social media.

Second Selangor MB convicted of graft

Khir is the second Selangor menteri besar to be convicted of graft after Harun Idris, who was also former Umno Youth chief in the 1970's.

Khir, who was menteri besar from 2000 to 2008, was found guilty by the apex court last week with receiving for himself and his wife Zahrah Kechik two plots of land at No 8 and 10, Jalan Suasa 7/11, Shah Alam valued at RM3.5 million from the director of Ditamas Sdn Bhd Shamsudin Hayroni.

The offence was committed at the Selangor MB's official residence on May 29, 2007. He was charged under Section 165 of the Penal Code for gratification by a public servant, which carries a maximum two years' jail sentence or a fine or both.

Justice Zulkefli led the five member bench that also included Federal Court judges Justices Ahmad Ma'arop, Hasan Lah, Jeffrey Tan Kok Wha and Ramly Ali.

In finding Khir guilty, Justice Tan who wrote the unanimous judgment said it was clear the price of RM3.5 million for Khir to purchase two plots of land was inadequate.

He cited findings of two valuation officers who said the cost of the land should have been at RM.5.5 million.

"By all accounts the value of the land and house in 2007 should at least be RM5 million which was supported by the valuation of the ninth prosecution witness who gave the value of the land in 2007 and original house at RM4.807 million.

"Had the house been untouched it should at least hold its value. But Khir took over the

house, and demolished it. Any diminution in the value of the land and house was caused by the appellant. Khir accepted the land house value of at least RM5 million," the judge said.

Two witnesses' testimonies intact

Justice Tan said the court also found that complainant Shamsuddin and contractor Nasir Ismail's testimonies were intact.

The judge said Shamsudin purchased the said land at Khir's request, but in the hope the former MB would buy it from him and pay the costs of renovation.

"Shamsudin was not agreeable to Khir's offer of RM3.5 million and counter proposed at RM5 to RM5.5 million. Shamsudin was forced to sell the said land to Khir as he knew Khir is the Selangor Development Corporation chairperson with which he had business dealings," he added.

On Nasir, Justice Tan ruled that he was a credible witness as his evidence was supported by two other witnesses and the trial court accepted his credibility.

Besides Shafee, other lawyers representing Khir were M Athimulan, Kamarul Hisham Kamaruddin and Jahabardeen Yunus and Sarah Abishegam

Prosecution was led by DPP Masri Mohd Daud, Mohd Dusuki Ahmad and Idham Abdul Ghani.