

Lawyers weigh in on what's next for Sarawak Report editor Clare Rewcastle-Brown, sentenced to jail in Malaysia for defaming Terengganu Sultanah



Lawyers said the Sarawak-born Briton would not be sent straight to jail as some might think, as she could appeal her conviction and sentence to a higher court, which would evaluate if the magistrate made the correct decision in the defamation case that was held in absentia. — Picture by Shafwan Zaidon

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By **Shathana Kasinathan**

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KUALA LUMPUR, Feb 19 — *Sarawak Report* editor Clare Rewcastle-Brown, who was sentenced to two years in jail by a Magistrates' Court after being found guilty of criminally

defaming Sultanah Nur Zahirah of Terengganu, will most likely be arrested should she ever enter Malaysia, several lawyers said.

However, they also said the Sarawak-born Briton would not be sent straight to jail as some might think, as she could appeal her conviction and sentence to a higher court, which would evaluate if the magistrate made the correct decision in the defamation case that was held in absentia.

“In my opinion, upon setting foot in Malaysia, it is more likely that she would face arrest since conviction and sentence have been passed against her for a criminal charge recognised by Malaysian Criminal law,” senior lawyer Datuk Shanmugam Ganesan told *Malay Mail* when contacted.

He said Rewcastle-Brown might consider making her appeal by remote through local lawyers rather than travelling here any time soon, considering there were other legal cases against her.

“Our advice would be to refrain from travelling to Malaysia pending the disposal of her cases.

“Meanwhile, her lawyer could file a stay of execution in the lower court (Magistrates’ Court), temporarily postponing her sentence pending the outcome of the appeal,” he added.

Rewcastle-Brown, whose brother-in-law is Gordon Brown, the UK prime minister between 2007 and 2010, was previously the subject of an arrest warrant issued by the court for her failure to show up when she was charged under Section 500 of the Penal Code for publishing remarks that were deemed defamatory to the Terengganu Sultanah in her book titled *The Sarawak Report: The Inside Story of the IMDB Exposé*.

The trial was subsequently held in Rewcastle-Brown’s absence, according to Section 425A of the Criminal Procedure Code.

Another senior lawyer Datuk Geethan Ram Vincent said that Rewcastle-Brown’s chances of being arrested upon arrival in Malaysia was high, but added that she had several legal options to challenge her conviction and sentence.

“This is because one potential ground for appeal is that the trial proceeded in Rewcastle-Brown’s absence.

“This raises questions about the applicability of certain legal provisions, such as Section 425A of the Criminal Procedure Code, which typically pertains to cases where the accused absconds after being charged,” he said.

He said that the primary option available to Rewcastle-Brown is to appeal against her conviction, wherein she must present compelling arguments to the higher court as to why the lower court's decision was erroneous.

“Similarly, she can appeal against her sentence by persuading the higher court that the imposed sentence (in this case two years of imprisonment) against her was manifestly excessive and that it ought to be reduced.

“Additionally, she may explore the possibility of seeking revision, which allows a higher court judge to review the proceedings of the Magistrates’ Court for any legal irregularities or errors in judgment. This avenue provides her with an opportunity to address potential shortcomings in her trial process,” he said.

Senior lawyer Datuk Sheelan Arjunan said there were several other grounds Rewcastle-Brown could argue to challenge her conviction and sentence.

As example, he listed procedural irregularities, legal errors and the introduction of new evidence, which he added is subject to certain legal requirements and the claims of ineffective assistance of counsel.

“Any procedural errors or irregularities during the trial process could form grounds for appeal. This could include issues such as improper admission of evidence, bias on the part of the judge, or failure to follow proper legal procedures.

“Legal errors such as errors in the application or interpretation of the law by the trial court could be raised on appeal. For example, if the court misinterpreted relevant statutes or case law, this could be grounds for challenging the conviction or sentence,” he said.

He added that if Rewcastle-Brown believes that her legal representation during the trial in absentia was inadequate and that this affected the outcome of the case, she could potentially appeal on the grounds of ineffective assistance of counsel.

But Sheelan also said that Rewcastle-Brown should take several precautionary measures to navigate her legal situation effectively before entering Malaysia.

He said she might want to consult specialists in international law and extradition to assess potential risks.

“Conducting a thorough risk assessment, including evaluating any outstanding warrants or legal proceedings, is crucial.

“Furthermore, notifying relevant authorities in Malaysia of her visit and ensuring all travel documentation is in order can help clarify her legal status and minimise risks,” he said.

He also said that designating an emergency contact person or legal representative and staying informed about developments related to her case are essential precautions.

“Finally, prioritising personal safety by avoiding high-risk areas and maintaining a low profile while in Malaysia is advisable,” Sheelan added.

While the Federal Constitution guarantees freedom of speech, assembly, and association under Article 10, lawyers said that this right is not absolute and must not contravene sensitive issues such as race, religion, and the royal institution.

Sultanah Nur Zahirah first sued Rewcastle-Brown on November 21, 2018 for criminal defamation over the latter’s claims in her book and demanded RM100 million in damages.

The Terengganu Sultanah claimed that the defamatory remarks suggested that she was involved in corrupt practices and had meddled in the Terengganu state government's affairs.

The Sultanah also said the claim that she had used her status to influence the establishment of the Terengganu Investment Board (TIA), which was later known as 1Malaysia Development Berhad (1MDB), was untrue.

Sultanah Nur Zahirah further denied details in the book that alleged that she had helped fugitive businessman Low Taek Jho, otherwise known as Jho Low, to become TIA's adviser.

Earlier this month on February 8, Rewcastle-Brown filed a notice of appeal at the High Court in Kuala Terengganu to set aside both her criminal defamation conviction and the imposed sentence.

Rewcastle-Brown appealed for the court to review the sentence under Sections 323 to 327 of the Criminal Procedure Code or Sections 31 and 35 of the Courts of Judicature Act 1964, as well as not to be present during the appeal hearing.