

HONG KONG / JUDGMENT

HKSAR v. CHAN TSZ TAK

COURT

Court of Appeal

DECIDED

16 January 2003

CASE / FILE NUMBER

CACC121/2002

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bjbj CACC121/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO. 121 OF 2002 (ON APPEAL FROM DCCC 1060 OF 2001)

BETWEEN HKSAR Respondent and CHAN TSZ TAK Applicant

Before : Hon Stuart Moore VP and Burrell J in Court Date of Hearing : 16 January 2003 Date of Judgment : 16 January 2003

J U D G M E N T

Hon Burrell J (giving the judgment of the Court) AUTONUMOUT On 26 February 2002 the applicant pleaded guilty to and was sentenced for four offences of dishonesty by HH Judge Pang in the District Court. AUTONUMOUT On three charges of obtaining property by deception he was sentenced to 20 months imprisonment on each charge, and on one charge of evading a liability by deception he was sentenced to nine months imprisonment. All sentences were ordered to run concurrently. AUTONUMOUT He now seeks leave to appeal those sentences on the ground that they were manifestly excessive. AUTONUMOUT The three offences of obtaining property by deception concerned three separate incidents in the summer of 1999 when the applicant answered advertisements for the sale of motor vehicles and, after negotiations with the owners, acquired possession of them by dishonest means. AUTONUMOUT The dishonest means involved the issuing of cheques for part of the purchase price of the vehicles on accounts which the applicant knew had been closed and the cheques later bounced. AUTONUMOUT The actual details of each transaction were somewhat complex. All that needs to be said to understand the extent of the applicant's criminality is that the arrangements which were made, including the worthless cheques, resulted in losses to the vehicle owners in the sum of \$84,000 on Charge 1,

\$17,000 on Charge 4 and \$10,000 on Charge 5, as well as the fact that they were duped into parting with possession of their vehicles. AUTONUMOUT On Charge 3 the applicant issued a worthless cheque for \$18,000 in purported repayment of a loan for that amount which he received in June 1999 from the mother of the victim in Charge 1. AUTONUMOUT It was accepted that in each case the vehicle was repossessed, in two cases by Finance Companies, and thus the applicant's possession of them was relatively brief. It was also accepted that the applicant had made some small repayments to the owner of the cars and had later fully repaid the \$18,000 loan on Charge 3. AUTONUMOUT In short, over a short period of time the applicant had cheated four members of the public. The total loss to the innocent victims was over \$100,000 and further losses were incurred by others following the repossession and resale of the motor vehicles. AUTONUMOUT At the time of committing these offences the applicant had a clear record and was 32 years old. AUTONUMOUT The learned judge correctly decided to impose an immediate prison sentence. On the motor vehicle charges, he chose a starting point of three years for each offence as reflecting the overall criminality of all three offences taken together. He allowed a proper discount of one year for the pleas of guilty and, generously, made a further reduction of four months for the small amounts of restitution and the clear record. On Charge 3, a sentence of nine months was passed concurrently but the learned judge omitted to state what the starting point had been. AUTONUMOUT Ms Wong, who now appears for the applicant relies on the case of HKSAR v. Wong Lo Tak, CACC652/1997, for two reasons. Firstly, to demonstrate that the learned judge's starting point was too high and, secondly, to support her contention that the judge's method of sentencing was incorrect. AUTONUMOUT As to the first reason, the facts of Wong Lo Tak were significantly different from the present case. In cases involving deception the maxim that each case depends on its own facts is particularly true. The number of offences, the time span of their commission, the nature of the cheat, the type of victims, the amount of the losses and by whom, are all factors to be considered in the context of each individual case. AUTONUMOUT It is apparent from the learned judge's written reasons for sentence that he had such matters in mind when he decided that the overall criminality would have merited three years imprisonment after trial. We cannot fault this assessment. The most that can be said is that it falls towards the top end of an appropriate range for these offences. The one year discount for pleas of guilty was correct and the further discount of four months was generous because of the relatively small repayments. AUTONUMOUT As for Charge 3, the learned judge should have stated his starting point. In the circumstances of his dealing with the other offences however, it is straightforward arithmetic to work out that it was about 15 months. Taken on its own, such a sentence may be regarded as somewhat harsh. However, in the overall context of this case, we consider it neither necessary nor appropriate to interfere with it. AUTONUMOUT As to the learned judge's method of sentencing, he chose to select overall starting point. Whilst such an approach is not the normal method for multiple offences we can see the reason for such an approach in this case and we do not criticize it. The judge was considering a course of dishonest conduct over a relatively short period of time. That criminal conduct can be looked at in the round and sentenced in the round. A more conventional method of sentencing would have undoubtedly led to the same result but in a more complicated way, namely by the overlapping of partially consecutive shorter sentences. The degree of overlapping being determined by the principle of totality.

AUTONUMOUT Sentencing in criminal offences is not a science governed by hard and fast principles. In this case the judge s final sentence was not manifestly excessive and was reached in a logical and acceptable way. Accordingly, for these reasons, the application is dismissed. (M. Stuart-Moore) Vice President (M.P. Burrell) Judge of the Court of First Instance Ms Lynda M.A. Shine, SGC, of Department of Justice, for the Respondent Ms Catherine Wong, instructed by Messrs Lam, Fung & Co., for the Applicant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" CACV Jeannie MY MokSo user Microsoft Word 9.0 h9L' Judiciary CACV Title Microsoft Word Document MSWordDoc Word.Document.8

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