

HONG KONG / JUDGMENT

HKSAR v. CHAN WAI LEUNG

COURT

Court of Appeal

DECIDED

30 November 2007

CASE / FILE NUMBER

CACC215/2007

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Before: Hon Ma CJHC, Stuart-Moore VP and Yeung JA in Court Date of Hearing: 30 November 2007 Date of Judgment: 30 November 2007 J U D G M E N T Hon Yeung JA (giving the judgment of the Court):

Introduction

On 4 June 2007, Deputy District Judge Johnny Chan convicted the applicant, Chan Wai-leung, of possession of 486.30 grams of a mixture containing 44.53 grams of heroin for the purpose of unlawful trafficking, and sentenced him to 6 years imprisonment. The applicant seeks leave to appeal against both conviction and sentence. The Prosecution Case On 30 April 1989, the applicant, carrying a black briefcase, was intercepted by two police officers (PCs 45398 and 10730) in Shanghai Street. The heroin mixture (packaged in 97 small bags), the subject matter of the charge, was found inside the black briefcase. Upon caution by PC 45398, the applicant said, Ah Sir, this thing has just been handed to me by someone who came here by taxi. With keys found from the applicant s person, the police entered Flat A2, 4/F, 36 Shan Tung Street, Mongkok (the flat) to conduct a search. The police found a large quantity of plastic bags, a plastic bag sealer machine and other items. There were heroin traces on some of those items. One rental receipt was seized from the flat and another was obtained from the landlady of the flat. Both receipts were issued in the name of the applicant. The police took a further cautioned statement from the applicant at the Mongkok Police Station and the applicant admitted knowledge of the dangerous drugs found in the black briefcase, saying that Ah Keung had just handed it to him. The Defence Case The applicant admitted most of the prosecution evidence, but claimed not to be aware of the nature and the existence of the dangerous drugs in the black briefcase or the items found in the flat. The applicant said he had moved out of the flat and that Ah Keung had taken over the tenancy of the flat with the permission of the landlady. He said it was Ah Keung who handed him the briefcase just before he was intercepted by the police officers. The applicant also said that at the time of his arrest, he was just helping Ah Keung to move the black briefcase to the flat and he

had no idea of its contents. The applicant alleged that the police officers had induced and threatened him in order to force him to admit knowing the nature and the existence of the dangerous drugs in the black briefcase. The applicant was asked, in cross-examination, why he said in his affidavit filed in connection with his extradition proceedings that the dangerous drugs were found in his girlfriend's flat. The applicant said the contents of the affidavit were inaccurate. Findings by the Judge The judge accepted the evidence of the police officers and rejected the applicant's explanation. The judge found that the applicant's admission was given freely and voluntarily. The judge found that the applicant was in possession of the dangerous drugs for the purpose of unlawful trafficking. Grounds of Appeal In his written submissions, the applicant suggested that the judge erred and drew a wrong conclusion based on his own perception and failed to verify the facts, thus rendering the trial unfair and unsatisfactory. The applicant complained against his Canadian lawyers for taking his assets and sending him to Hong Kong to stand trial. He said those lawyers were guilty of theft. The applicant further claimed that he had generated some significant projects that could create significant employment for people in need. In particular, the applicant said his projects could solve many of our social problems, and could enhance the lawyers' integrity and ethical standards. In addressing us today, the applicant says that he was a law-abiding citizen in Canada and was doing very good business. He says he was arrested in Canada, not because of any criminal matter, but only because of immigration matters, which eventually led to his extradition to Hong Kong. The applicant repeats his complaint that his Canadian lawyers had taken all his assets. He also emphasizes his ability and know-how that could be utilized for the benefit of our society. Discussion The evidence against the applicant was simple and straightforward. It was also overwhelming. The judge was entitled to accept the evidence of the prosecution witnesses that the dangerous drugs were found in the applicant's physical possession and that the flat rented by him was connected with drug trafficking activities. The judge was entitled to reject the applicant's evidence, and to conclude, based on the undisputed evidence and the applicant's admissions, that he was aware of the existence and the nature of the dangerous drug found in the black briefcase and that he had possession of them for the purpose of unlawful trafficking. The matters raised by the applicant, in both his written and oral submissions, are not relevant to the issues that we have to decide in this application. On the evidence, the applicant was rightly convicted and we do not find the conviction in any way unsafe or unsatisfactory. The application for leave to appeal against conviction is dismissed. Sentence The offence was committed in 1989, and according to then prevailing sentencing tariff guidelines laid down in *Chan Chi-ming v R* [1979] HKLR 491, the sentence for trafficking in 150 to 1000 grams of a mixture of hard drugs, including heroin, should range from 5 to 8 years. The applicant was convicted of trafficking in 486.30 grams of a heroin mixture. The applicant, with one previous conviction for trafficking in dangerous drugs, pleaded not guilty to the charge and had absconded. He was only repatriated to Hong Kong from Canada after he failed in his contested extradition proceedings lasting two years from 2004 to 2006. There was no mitigation factor that could be advanced on his behalf. The 6-year sentence, though not a lenient one, is neither wrong in principle nor manifestly excessive. His application for leave to appeal against sentence is also dismissed. (Geoffrey Ma) Chief Judge, High Court (M. Stuart-Moore) Vice-President (W Yeung) Justice of Appeal Ms Mary Sin, SADPP of the Department of

Justice for the Respondent. Applicant: In Person. PAGE - A B C D E F G H I J K L M N O P Q R S T U
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