

HONG KONG / JUDGMENT

# HKSAR v. CHEN HONGLIANG

## COURT

Court of First Instance

## DECIDED

17 April 2007

## CASE / FILE NUMBER

HCMA248/2007

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bjbj HCMA 248/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. HCMA 248 OF 2007 (ON APPEAL FROM KCCC 1005/2007)

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BETWEEN HKSAR Respondent and CHEN HONGLIANG Appellant

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Before: Deputy High Court Judge E Toh in Court Date of Hearing: 17 April 2007 Date of Judgment: 17 April 2007

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## J U D G M E N T

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The Appellant had pleaded guilty to one charge of remaining in Hong Kong without the authority of the Director of Immigration after having landed unlawfully, contrary to section 38(1)(b) of the Immigration Ordinance, Cap. 115 and he was sentenced to 15 months imprisonment. The Appellant now appeals against the sentence. The Appellant was found at 2135 hours by a police officer in Mongkok. He admitted that he had illegally entered Hong Kong with a view to looking for a job. The Appellant was represented by a duty lawyer who told the learned Magistrate that the Appellant had to support a family consisting of his wife, children and elderly parents; and that they were in dire financial straits. The learned Magistrate, after considering that the Appellant had previous convictions in Hong Kong and also the tariff guidelines set down in So Man King's case [1989] 1 HKLR 142, he sentenced the defendant to 15 months imprisonment. The Appellant today appealed on humanitarian grounds to be allowed to leave Hong Kong earlier so that he can return to his family because he says his parents are old. His father suffers from hypertension and also cancer; and he has kept the fact of the cancer from his father in order not to upset him. He claimed he came to Hong Kong to try to find a job to earn money. The Appellant is not a stranger to Hong Kong. He came here previously three times and he had also committed

a similar offence in 1991 when he received 12 months imprisonment. He knows that without coming lawfully and without permission to work he cannot work in Hong Kong. The Appellant knew about his family situation before he came to Hong Kong but yet he chose to take the risk. The tariff guidelines laid down in the case of So Man-king affirms that an appropriate sentence after plea is 15 months imprisonment for this type of offence. I agree with the learned Magistrate that there are no exceptional humanitarian grounds or special circumstances in this case to warrant a departure from that sentence. I see no merit at all in this appeal and so this appeal is dismissed. (E Toh) Deputy Judge of the Court of First Instance High Court Ms. Winnie Lam, Government Counsel, for the Respondent The Appellant, acting in person PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk qmd\_dUd vanA vanA '@^0 '@^0 '@^0 '@^0 '@^0 '@^0 HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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