

HONG KONG / JUDGMENT

HKSAR v. CHEN WUCHANG

COURT

Court of First Instance

DECIDED

16 May 2007

CASE / FILE NUMBER

HCMA251/2007

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bjbj 0&F9 HCMA251/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.251 OF 2007 (ON APPEAL FROM STCC 374 OF 2007)

BETWEEN HKSAR Respondent and CHEN WUCHANG (

REASONS FOR JUDGMENT

AUTONUMOUT The appellant was convicted on his own plea of two counts of making a false representation to an immigration assistant , contrary to section 42(1)(a) of the Immigration Ordinance, Cap. 115 [Charges 1 and 2] and one count of conspiracy to defraud , contrary to common law and sections 2(3) and 6 of the Criminal Jurisdiction Ordinance, Cap. 461 and punishable under section 159C(6) of the Crime Ordinance, Cap. 200 [Charge 3]. He was sentenced to a total of 18 months imprisonment. The appellant appeals against that sentence.

AUTONUMOUT On 8 January 2007, having been found in unlawful employment, the appellant admitted to have paid \$28,000 to enter into a bogus marriage with a Hong Kong resident thus availing him to the 90 day permits for conjugal visits [Charge 3]. Through this means, he had made two visits to Hong Kong (9 April 2006 and 6 January 2007) and on each occasion misrepresented to the immigration official that he was coming to visit his wife whereas his true purpose was to seek employment [Charges 1 and 2]. AUTONUMOUT In his Reasons for Sentence, the magistrate observed I have been working as a Principal Magistrate in the Immigration plea court in Shatin since March 2006 and prior to the defendant s appearance, there has been a significant number of these type of cases recently coming before me. The scheme that the defendant s entered was wholly dishonest and meant that he was able to secure a 90 days permit to enter Hong Kong rather than the normal 7 days permit. If the scheme had not been detected then the defendant would have been able eventually to settle in Hong Kong with a 1 way permit. The defendant was prepared to pay a substantial amount of money in mainland terms to enter

this dishonest scheme, and in my view he could expect no leniency. In respect of Charge 3, Mr. Recorder Lok in the case of HKSAR v. Lai Kon Fai HCMA129/1998 upheld a starting point of 18 months imprisonment at first instance for a similar type of dishonest scheme, where the appellant had been a Hong Kong resident. That was the starting point I adopted for Charge 3 which I reduced to 12 months to reflect the defendant's plea. Similar considerations applied to Charges 1 and 2 and I adopted similar starting points. In each case, the defendant had used the unlawfully obtained T exit endorsement to enter Hong Kong, ostensibly to visit his wife but in reality to take up unlawful employment. I considered totality in sentencing and was of the view that a total sentence of 18 months was appropriate. In order to achieve that, I ordered the 12 month sentences on charges 1 and 2 to run concurrently and I ordered 6 months of the 12 month sentence on Charge 3 to run consecutive to Charges 1 and

2. I so sentenced. AUTONUMOUT In my judgment, the magistrate was correct to follow Law Kon Fai in respect of Charge
3. He was within range and leaning to lower side to impose 12 months in respect of Charges 1 and : HKSAR v. Pahlila [2007] 1 HKLRD
410. Over all, there is nothing to be said about the composite sentence of 18 months. AUTONUMOUT As grounds of appeal, the fact that the appellant's mother is seriously ill, or that he is the sole breadwinner in the family, are of no relevance at all. AUTONUMOUT The appeal is dismissed. (D. Pang) Deputy High Court Judge Ms Winnie Lam, GC of Department of Justice, for HKSAR The Appellant in person PAGE - PAGE A 1udk 1udk !AB (#p# &`#\$ &`#\$ m_IP m_IP m_IP m_IP m_IP m_IP m_IP m_IP 6/05F 6/05 & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title RM9 RM9 RM9 Microsoft Word Document MSWordDoc Word.Document.8

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