

HONG KONG / JUDGMENT

HKSAR v. CHENG CHI WAH

COURT

Court of First Instance

DECIDED

1 March 2005

CASE / FILE NUMBER

HCMA1255/2004

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bjbj HCMA1255/2004 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.1255 OF 2004 (ON APPEAL FROM NKCC 6207 OF 2004)

BETWEEN HKSAR Respondent and CHENG CHI WAH (ought leave to abandon his appeal against sentences of four months imprisonment imposed upon him by Mr Mackintosh. Those sentences were imposed after the appellant was convicted following his pleas of guilty to two offences, namely behaving in a disorderly manner in a public place, contrary to section 17B(2) of the Public Order Ordinance, Cap.245 and possession of an offensive weapon, contrary to section 17 of the Summary Offences Ordinance, Cap.228. The sentences were ordered to be served concurrently one with the other.

Facts

AUTONUMOUT By the Amended Brief Facts the appellant accepted that shortly after 6 a.m., on 5 August 2004, he was a member of one group of males who were facing off another group of males in the street at the junction of Mongkok Road and Canton Road in Mongkok. The groups were exchanging obscenities with each other. For his part the appellant shouted obscenities and picked up an aluminum pipe, 90 cm in length, that he waved towards the other party in a threatening manner. When police officers, responding to a telephone call, intervened some of the men present in the two groups escaped whilst the appellant was arrested. Under caution the appellant said that he was present at that place because he had been summoned to render reinforcements to his Tai Lo . Reasons for sentence AUTONUMOUT The magistrate took a starting point of six months imprisonment for each offence to which he applied a discount of 1/3 for the plea of guilty. The magistrate noted that the appellant had been convicted of an offence of assault occasioning actual bodily harm for which he had been sentenced to 18 months imprisonment.

Conclusion

AUTONUMOUT Initially, I granted leave to the appellant to abandon his appeal. However, section 117 of Cap.227, the Magistrates Ordinance which governs the abandonment of appeals clearly does not apply to this situation. Here, the appellant answered to his bail after the case was called on in this court room, and then advised the court that, having considered the matter whilst on bail, he accepted now that the sentence was appropriate and he wished to abandon his appeal. It is regrettable that it is not possible to acknowledge the appellant s frank change of heart by permitting him to abandon his appeal. However, to comply with the provisions of the Ordinance, it is necessary for the court to dismiss the appeal. That I now do, taking the same view that the appellant has expressed that these are appropriate sentences. (Michael Lunn) Judge of the Court of First Instance High Court Miss Winnie Lam, GC, of the Department of Justice, for the Respondent Appellant in person 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 (#p# &`#\$ &`#\$ u)4q& u)4q & 6" CACV Jeannie MY MokSo ABC.dot setup Microsoft Word 9.0 Judiciary CACV Title Microsoft Word Document MSWordDoc Word.Document.8

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