

HONG KONG / JUDGMENT

HKSAR v. CHENG CUICHAN

COURT

Court of First Instance

DECIDED

30 April 2008

CASE / FILE NUMBER

HCMA1227/2007

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bjbj Appellant

Before: Deputy High Court Judge Line in Court Date of Hearing: 30 April 2008 Date of Judgment: 30 April 2008

J U D G M E N T

1. This is an appeal against sentences totalling 18 months' imprisonment. They were imposed following pleas of guilty to a total of five charges. The 5th charge was the most serious because this lady was found to be working and she had obtained the job by using a forged identity card, she being here on a Chinese two-way permit. For that offence, she received 12 months' imprisonment.
2. She produced a valid, or an apparently valid, Chinese two-way permit which had her correct name on it, but her date of birth was misstated and she had come into Hong Kong on this travel document, which is otherwise a proper one save for the misstated date of birth, on two occasions and that gave rise to two charges of using a false travel document and also two parallel charges of making false representations to an Immigration officer.
3. For all of those offences, the magistrate imposed 8-month sentences concurrently but he overlapped the 12 months to create the 18 month total. The appellant had a previous conviction in 1996 for using an identity card relating to another person and for remaining in Hong Kong for which she received a total of 9 months' imprisonment.
4. Today, the appellant makes no excuse for her conduct of using another's identity card to obtain employment and does not seek to mitigate in any way that would avoid the full weight of sentence for that offence.

5. In relation to the other offences, she says this: that it was after she had left Hong Kong in 1996 that she went back to China and found by reason of her age, she could not find employment and that, accordingly, it was then in 1996 that she caused an alteration to be made through an official - it appears on some sort of friendly basis - to a document called a household register changing her date of birth from 1951 to 1957 and that allowed her to obtain employment which she badly needed for reasons she tells me, but which I will not repeat here.
6. She goes on to say that it was in 2004, when she applied for a travel document, that the date of birth put in that travel document was based on the altered household register and that is why it also appeared on her travel document, making it a false one which she used twice to come to Hong Kong. She says that she had no intention of misleading the Hong Kong authorities and, indeed, had given her full and proper name and other details and that, accordingly, she did feel that she had done less wrong in respect of these offences than the other one.
7. The respondent points out that one of the consequences of misstating the date of birth was that it would not have thrown up the record of her conviction back in 1996 when she presented herself to the Immigration officer. The officer in court who assists counsel for the respondent has been helpful and she has told us that probably it would not have shown up a conviction as old as 1996 but that it may have done and if it had, the Immigration officer would likely have asked some more searching questions and may have granted entry for a shorter period of time. So the question really arises, was the date of birth altered for the reason that the appellant gives back in 1996 or was it done later in order to get into Hong Kong avoiding the risk of that previous conviction showing up? It is an almost impossible question for a court in these circumstances to decide.
8. One of the advantages of pleading guilty is that an appellant has not spent his or her credibility in telling lies and matters of mitigation which are asserted are the more likely to be believed. In the brief time in court that the appellant has addressed me directly, albeit through the services of an interpreter, I can see that she is a lady who has had a hard life in the way she sets out in her letter. Her story has got the ring of truth about it.
9. Accordingly, I will act on the basis on which she has addressed me and, in those circumstances, I judge that a sentence of 3 months' imprisonment for the first four charges concurrent on each would be adequate. There is obviously a very great difference between someone who presents a false travel document in order to hide their identity and allow themselves entry into Hong Kong when, in their true identity, it would be refused and cases where the falsity of the document has arisen for historical reasons unrelated to seeking to mislead the Hong Kong Immigration authorities.
10. As I understand it, the former category would attract a sentence in the region of 12 months after a plea of guilty. Accordingly, the difference in moral culpability would justify a larger reduction in sentence down to the 3 months, which I impose now on those charges.

11. The magistrate was clearly touched by the mitigation this lady presented because he did not pass a sentence in line with Lee Chan Li in respect of using another s identity card to obtain employment. To make it the tidier, what I shall do is pass the standard sentence following Lee Chan Li on Charge 5 of 15 months' imprisonment. Shall I make that consecutive or concurrent to the 3-month sentences on Charges 1 to 4? This appellant has had a hard life and as a matter of mercy only, I will make it concurrent. The total sentence is thus 3 months shorter than that imposed by the magistrate. (P Line) 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 A B C D E F G H I J K L M N O P Q R S T U V &`#\$ JUDGE.DOT setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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