

HONG KONG / JUDGMENT

HKSAR v. CHENG YING

COURT

Court of First Instance

DECIDED

10 October 2007

CASE / FILE NUMBER

HCMA792/2007

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bjbj

Before: Hon Beeson J in Court Date of Hearing: 10 October 2007 Date of Judgment: 10 October 2007

J U D G M E N T

The Appellant pleaded guilty in the Magistracy to one charge of Making a False Representation to an Immigration Officer, contrary to section 42(1)(a) of the Immigration Ordinance, Cap. 115. She was sentenced to 8 months in prison and now appeals against that sentence. Before the Magistrate, she admitted that she had entrusted a friend to obtain a Tanqin(T) exit endorsement, which is for family reunion, on her China Permit which would allow her to remain in Hong Kong for 90 days. On arrival in Hong Kong, she told the Immigration Officer that she had come to visit her husband whom she had married on 19 October 2006 in the City Hall Marriage Registry both representations were untrue. On enquiry she was found to have limited knowledge of her husband and eventually she admitted under caution she had never married any Hong Kong resident, but she had wanted to leave Mainland China because she had quarrelled with her real husband. In mitigation, she relied on the fact that she pleaded guilty and was remorseful. She told the Magistrate she was aged 31 and was the sole breadwinner of the family as her husband was serving a prison term for a drugs-related offence. She had a 2 years old daughter who was being cared for by her father-in-law aged 69, in Mainland China. The Magistrate took into account her plea of guilty, and that she had no similar convictions. He noted that the normal starting point for this offence was 15 months imprisonment. However, he took a lower starting point of 12 months and giving credit for the plea of guilty, passed a sentence of 8 months. He decided to take a starting point of 12 months imprisonment because the false representations did not relate to the Appellant's identity per se, but to her connection with Hong Kong or to Hong Kong. The Magistrate seems to have adopted a lenient starting point in this case. Various cases

which were referred to indicate that the proper starting point after trial for the offence of using a false travel document, or making a false representation to an Immigration Assistant was 18 months imprisonment. He also considered it was less serious as the false representation did not relate to her identity, but to her connection with Hong Kong. There is no justification for making that distinction. R v. So Man-king [1989] 1 HKLR 14 makes it plain that the substantial element in sentencing for such offences of this nature is the unlawful presence in Hong Kong. Whether that was achieved by using a false travel document, or making a false representation about the Appellant's identity or about her connection with Hong Kong is irrelevant. One type of false representation is no more culpable than the other for sentencing purposes. [HKSAR and Yim Lee Kuen HCMA 1187/2002]. For these reasons I take into account that the Appellant has already received the benefit of the Magistrate's generous starting point and the full discount of 1/3 for plea. A more appropriate sentence in this case, would have been 12 months imprisonment but I do not propose to tamper with the sentence, recognising that the Magistrate appears to have given maximum weight to the personal circumstances of the Appellant. The Appellant's appeal is dismissed. (C-M Beeson) Judge of the Court of First Instance Mr Prakash L Daryanani, SGC, of Department of Justice, for the Respondent The Appellant, in person PAGE - A B 1udk 1udk i\$&`G QVdW **^BDbn QVdW HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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