

HONG KONG / JUDGMENT

HKSAR v. CHEUNG CHUNG

COURT

Court of First Instance

DECIDED

26 January 2007

CASE / FILE NUMBER

HCMA1070/2006

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bjbj Appellant

Before: Deputy High Court Judge Line in Court Date of Hearing: 26 January 2007 Date of Judgment: 26 January 2007

J U D G M E N T

1. This is an appeal against sentence for driving whilst disqualified. The appellant received a sentence of 2 months' imprisonment.
2. The facts were that on 11 July at Fanling Magistracy, he was disqualified from driving for 3 months. At 6.40 on that very day, he was driving a motor vehicle. One can find it hard to imagine a more flagrant breach. It is suggested that he had obtained employment other than as a transport worker, which was his job previously, between the disqualification and 6.40 pm and that it was on receiving a telephone call that his child had fallen over, that he decided to drive. As the magistrate pointed out, there is no suggestion that it was a genuine emergency and certainly the fact remains he could easily have taken a taxi or some other form of transport if it had been.
3. Mr Fu has said everything it is possible to say to try and stop the sentence of 2 months' imprisonment still running. He may have gone some way to seeking to persuade, save that it became apparent to me - I had not realised it before - that on 20 July, nine days later, this appellant was driving his vehicle again.

4. He appeared in court on 21 August, pleaded guilty, and was dealt with and given a suspended sentence of imprisonment for that driving. It is common ground that the magistrate who passed that sentence was in ignorance of the fact that there was an outstanding case following the driving of 11 July. This sentence that is appealed now, was passed on 24 October. I am afraid learning of that drives from my mind any thought of the exercise of mercy.
5. Driving whilst disqualified is an offence that attracts sentences of imprisonment. Sometimes it is suspended; sometimes it is not. There is the alternative of community service obviously available. If it came to be thought that you could have one go at driving whilst disqualified and not be imprisoned, then the usefulness of disqualification would be greatly diminished. Motorists must appreciate that if they breach the court order, then they are in jeopardy of being locked up. Obviously, the cases that deserve suspension and that deserve immediate imprisonment have to be identified.
6. For the reasons I have given, the flagrant breach on the day in question and the subsequent behaviour of driving whilst disqualified again, both make this an appropriate case for immediate custody.
7. I note that the magistrate said that he regarded the subsequent conviction of the driving whilst disqualified that attracted the suspended sentence on 21 August as irrelevant. I take it that what he meant by that was that it lacked the aggravating force that it would otherwise have had if it had antedated the conduct in question here. But it cannot be irrelevant because, generally speaking, a man's whole character and behaviour is taken into account when it comes to sentencing.
8. Mr Fu urges upon me to look at his subsequent conduct in selling the motor vehicle in question, demonstrating he does not intend to drive it again. Equally, when looking at that, I also look at the fact that he offended subsequently, having been stopped by the police on 11 July only nine days later. If I were to regard that as completely irrelevant, what would happen is that the aggravation of repeatedly driving whilst disqualified would be absent from the sentence of the man completely and that would not be right. It would offend commonsense. So even though Mr Fu has said everything possible he can on the appellant's behalf, this appeal against sentence is dismissed. (P Line) Deputy High Court Judge Ms Wong Sze-lai Lily, Senior Government Counsel, of the Department of Justice for the Respondent Mr C S Fu, instructed by Messrs Ko & Chow, for the Appellant PAGE - PAGE CRT3/26.1.2007/MMcG HCMA1070/2006/Reasons for Judgment 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 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 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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