

HONG KONG / JUDGMENT

HKSAR v. CHEUNG WAI LUNG

COURT

Court of First Instance

DECIDED

7 February 2007

CASE / FILE NUMBER

HCMA12/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMA 12/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 12 OF 2007 (ON APPEAL FROM KCCC 7364/2006)

BETWEEN HKSAR Respondent and CHEUNG WAI-LUNG Appellant

Before: Deputy High Court Judge E Toh in Court Date of Hearing: 7 February 2007 Date of Judgment: 7 February 2007

J U D G M E N T

The Appellant had pleaded guilty in the Magistrate s Court to one charge of obstructing a police officer in the due execution of his duty contrary to section 36(b) of the Offences against the Person Ordinance, Cap. 212. He was sentenced to 4 months imprisonment. He now appeals against that sentence. The facts to which the Appellant admitted was that, on the day of the offence, two sergeants, who were on patrol, saw the Appellant counting out a number of tablets, and the officers at that stage suspected that they were dangerous drugs. The facts alleged that on seeing the officers, the Appellant immediately put the tablets into his mouth, and one of the officers then stepped up to the Appellant and demanded that he spat out the tablets. The Appellant refused and there was a struggle, and during the struggle, despite the fact that the officers warned him on a number of occasions to stop it, he did not stop. Eventually the officers managed to put the Appellant under control. One of the officers suffered abrasions to his left knee and left elbow and the Appellant himself suffered an abrasion to his left hand. The Appellant had previous convictions, though only 29 years old, but nothing similar. In mitigation, it was advanced on his behalf that the Appellant was sitting down outside the restaurant. Having ordered food, he was taking his painkillers when the police officers rushed up to him, initially

from behind, and demanded that he spat out the tablets. The Appellant apparently had obtained the painkillers from a pharmacist. The learned Magistrate then gave an opportunity to counsel to obtain full details of the pharmacy from which the Appellant had bought the painkillers. It appears from the reasons for verdict that that information was supplied, and that the painkillers were taken by the Appellant because he had suffered a fracture to his hand. In mitigation, the Appellant said he had dropped the packaging of the drugs on the ground at the scene, but according to the prosecution no packaging had been seized at the scene. It may be that the reason for that was because the police were not looking for any packaging, because I do note that according to the facts of the case when the Appellant was cautioned, he exercised his right to remain silent, so the police officers were not alerted to the fact that there would be packaging at the scene that they should look for. The learned Magistrate upon hearing the mitigation initially thought that it was more in the nature of a defence than mitigation, but it became apparent to him as he noted in his Reasons for Sentence that the Appellant whilst struggling knew that the officers were police officers and that they were making a legitimate demand and the Appellant had accepted that it was a proper request to spit out the tablets. The learned Magistrate also considered that, the Appellant was accepting by his plea that he was making it more difficult for the police to carry out their duties. The learned Magistrate accepted the mitigation that the Appellant was taking painkillers, but of course, this type of offence called for a deterrent sentence and the learned Magistrate took into account the fact that some violence was used in this case against the police. So the learned Magistrate considered that a starting point of 6 months imprisonment to be appropriate and he sentenced the Appellant to 4 months imprisonment. On appeal, Mr Boyton on behalf of the Appellant submitted several grounds, mainly that the sentence was manifestly excessive and Mr Boyton relied on the case of HKSAR v Rai Binay, HCMA 598 of 2006. In that case, the Appellant was seen by a police officer also suspected him to be in possession of dangerous drugs. When the police revealed their identity, the Appellant in that case pushed the policemen away and tried to run away. The Appellant in that case reacted very violently and fought quite hard and there was a major struggle. The police officers managed to push him on the ground, there was still a violent struggle and eventually he was subdued. In that case, Rai Binay was 28 years old and has previous convictions. It was clear that he had also a previous offence of assaulting a police officer for which he was sentenced to 2 months imprisonment. So Rai Binay was charged with obstruction. However, the court considered that 6 months imprisonment was on the high side, and was manifestly excessive in the circumstances of that case, it allowed the appeal against sentence and substituted a sentence of 4 months imprisonment, thus reducing the sentence from 6 months to 4 months. This was a sentence imposed after trial. I accept Mr Leung's argument that each case has to be looked at on its own facts. There is no sentencing guideline for this type of offence. What has to be looked at is the seriousness of the obstruction, the injury, if any, to the police officers, and also, most importantly, the court has to consider that a deterrent sentence is necessary in view of the fact that police officers have to be protected in carrying out their duties. I totally agree that a deterrent sentence is necessary for this type of offence. Our police officers face danger on the road everyday, and they have to be protected when they are carrying out their duties, and it is the responsibility of every citizen here in the HKSAR to cooperate with the police in their lawful

request or demand. Here the injury suffered by the police officer though not serious, but, one of the officers had abrasions to his left knee and left elbow incurred in carrying out his duties which should not happen in a civilized society. So, what I have to consider in this particular case is the fact that the Appellant in this case, did put up a struggle, but on a scale, if one puts the struggle on a scale then this struggle was not of the most serious type. I do take into account the fact that the Appellant had no previous similar conviction, I do not agree with Mr Boyton that the learned Magistrate did not take into account of the fact that the police initially had approached him from behind, because the learned Magistrate never said that there was premeditation when he was assessing the sentence. Initially in mitigation, he said he did not see the police but subsequently after being told that they were police officers, he continued to struggle and still refused to spit out the tablets. So taking the fact of this case, in that first of all, the Appellant was ingesting painkillers and possibly he felt aggrieved when he was told to spit them out and refused to do so, he therefore put up a struggle. The struggle was quite a long struggle and resulted in one of the police officers getting abrasions. The Appellant is 29, this is the first time that he has committed such an offence, but the court has to impose a deterrent sentence, I consider that 6 months as a starting point for this kind of case is manifestly excessive. I consider that a more reasonable starting point this case would be one of 4 months imprisonment. Taking into account the fact that this is a plea, I therefore reduce the sentence to 2 and 1/4 months, but taking into account that that would be very difficult for the Correctional Services to work out, I therefore reduce it to a more appropriate or easily counted sentence, which would be 2 months. So the appeal is allowed. The sentence of 4 months imprisonment will be changed to one of 2 months imprisonment. (E Toh) Deputy High Court Judge Mr David Leung, SGC of Department of Justice, for the Respondent Mr David Boyton, assigned by the Director of Legal Aid, for the Appellant

PAGE - A B C D E F G H I J K L M N 1udk 1udk i\$&`G HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=56217

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-cheung-wai-lung-2007>

Prepared on 28 October 2026 · Esheria