

HONG KONG / JUDGMENT

HKSAR v. CHO HOI KIT

COURT

Court of First Instance

DECIDED

10 July 2007

CASE / FILE NUMBER

HCMA490/2007

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bjbj

Before: The Honourable Mrs Justice V. Bokhary in Court Date of Hearing: 10 July 2007 Date of Judgment: 10 July 2007

J U D G M E N T

The Appellant appeals against the sentence of detention in a Drug Addiction Treatment Centre (DATC) passed on him by T.S. Jenkins, Esq. in the Magistrate s Court at Shatin on two charges under the Dangerous Drugs Ordinance, Cap. 134, to which he had pleaded guilty, namely possession of a dangerous drug, contrary to section 8(1)(a) and (2), and possession of apparatus fit and intended for the inhalation of dangerous drugs, contrary to sections 36(1) and (2). He appeals on the ground that he was serving a prison sentence at the time and that it is wrong in principle to order detention in a DATC of a person currently serving a term of imprisonment. The prosecution (through Mr Cheung Wai-sun who is highly experienced and always helpful) concedes that that is wrong in principle. On the decided cases, principally that of AG v To Ka-shing [1987] HKLR 69 decided by the Court of Appeal, I consider the prosecution s concession to be correct. Accordingly, I set aside the order for detention in a DATC and will, as the Appellant asks, impose a sentence of imprisonment instead. In his Reasons for Sentence, the Magistrate helpfully states what he would have done if he had not ordered detention in a DATC. He would have, he states, taken a starting point of 9 months imprisonment on the possession charge, reduced it to 6 months to reflect the Appellant s guilty plea, imposed a concurrent term of 3 months imprisonment on the apparatus charge, and order that total of 6 months imprisonment to run consecutively to the prison sentence which the Appellant was currently serving for offences unrelated to these. Presumably, as Mr Cheung notes, the starting point adopted for the apparatus charge was 4 months imprisonment. The possession was in the dangerous drug commonly known as . In the charge, the drugs are described as: one plastic bag containing traces

of methamphetamine, one plastic bag containing traces of a solid containing methamphetamine, one plastic bag containing 0.09 grammes of a crystalline solid containing methamphetamine hydrochloride (a salt of methamphetamine) and one plastic bag containing 0.39 grammes of a crystalline solid containing 0.37 grammes of methamphetamine hydrochloride (a salt of methamphetamine). The only mitigation available to the Appellant are his guilty pleas, he being a man in his mid-20s with a string of previous convictions. All things considered including submissions made on behalf of the Appellant, I allow the appeal to set aside the order for detention in a DATC and impose instead a sentence of 6 months imprisonment, made up of 6 months on the possession charge and 3 months concurrent on the apparatus charge, such total sentence of 6 months imprisonment to run consecutively to the sentence of imprisonment which the Appellant is currently serving. (V. Bokhary) Judge of the Court of First Instance High Court Miss Wong Sze-wing, Barbara, instructed by the Legal Aid Department, for the Appellant Mr Cheung Wai-sun, Patrick, DPGC and Miss Agnes Chan, SGC of the Department of Justice, for the Respondent PAGE - 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 1udk 1udk i\$&. HCMA.dot setup Microsoft Word 9.0 z5:v z5:v Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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