

HONG KONG / JUDGMENT

HKSAR v. CHOW KEUNG

COURT

Court of Appeal

DECIDED

20 April 2007

CASE / FILE NUMBER

CACC478/2006

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bjbj CACC 478/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO. 478 OF 2006 (ON APPEAL FROM DCCC NOS. 718 & 912 OF 2006)

BETWEEN HKSAR Respondent and Applicant CHOW KEUNG hT7_ Court): AUTONUMOUT This is an application for leave to appeal against sentence. The applicant pleaded guilty before Deputy Judge Yau in the District Court to two charges of burglary and to one of remaining in Hong Kong without the authority of the Director of Immigration. He was sentenced to a total term of five and a half years imprisonment. AUTONUMOUT The first burglary was committed between the evening of 29 June 2006 and sometime on 30 June 2006 at a house in Kowloon Tong which had been left vacant for some years. A door had been prised open and stolen from those premises was a T-shirt. This was the first charge. AUTONUMOUT The second burglary was more serious. These were occupied premises, a house in Devon Road, Kowloon Tong and the applicant entered those premises during the day when there was present a domestic helper. He was wearing a mask and he stole from the premises a considerable quantity of cash and jewellery to the value of about \$162,000. This was the second charge. The third charge of assaulting the helper was not proceeded with. AUTONUMOUT Not long before midnight on 29 June 2006 the applicant was intercepted by the police at the border of Lok Ma Chau. He admitted that he had entered Hong Kong unlawfully a few days before (the fourth charge) and on his person were found the items that had been stolen from the house in Devon Road. AUTONUMOUT He is not a person of previous good character having been convicted in December 2002 of robbery, for which he was sentenced to four years and eight months imprisonment and also of remaining in Hong Kong without authority for which he was sentenced to 15 months imprisonment, nine months to run concurrently. AUTONUMOUT In relation to each of the burglary offences the judge took a starting point of three years imprisonment and imposed a term of two years on each in recognition of the plea of guilty but ordered each to run wholly consecutively to the other. Because the immigration offence was not his first offence the judge sentenced him to a term of eighteen months imprisonment and ordered that to run wholly consecutively to the rest of the sentence making a total of five years and six months imprisonment. AUTONUMOUT We recognise that this applicant

is a repeat offender and that these offences were committed not very long after his release for a previous offence of some seriousness. Nonetheless we are troubled by the totality which we think, in the light of the pleas of guilty and the circumstances as a whole, is excessive. The nature of the two burglaries was somewhat different: the first in an empty house with a T-shirt stolen; the second being more serious given the very substantial quantity of jewellery stolen. We think a more appropriate disposition for these offences is as follows: we shall leave undisturbed the sentence of two years imprisonment in relation to the first charge; for the second charge we would adopt a starting point of three and a half years imprisonment and, giving credit for the plea of guilty, impose a term of two years and four months imprisonment in place of the two years imposed by the judge at first instance. However, we would order one year and six months of that term to run consecutively to the term imposed in relation to the first charge, making a total for the two burglaries of three years and six months imprisonment; and we would leave undisturbed the sentence of eighteen months imprisonment in relation to the last charge but order fifteen months thereof to run consecutively, the remainder to run concurrently with the term of three years and six months imprisonment for the first two offences. This makes a total of four years and nine months imprisonment, in place of the term of five and a half years imposed by the judge. AUTONUMOUT Accordingly, we grant the applicant leave to appeal against sentence, treat the application as the hearing of the appeal and allow the appeal to the extent we have indicated, substituting the terms we have particularised. (Frank Stock) Justice of Appeal (M. P. Burrell) Judge of the Court of First Instance Mr Simon Tam, SGC of the Department of Justice for the Respondent Applicant in person PAGE - PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ v?_.. J[6 CfT(.l^L k1B[p J[6 .l^L k1B[v?_.. & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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