

HONG KONG / JUDGMENT

HKSAR v. CHUI CHI HUNG

COURT

Court of Appeal

DECIDED

13 February 2007

CASE / FILE NUMBER

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Before : Hon Stuart Moore VP and Lunn J in Court Date of Hearing : 13 February 2007 Date of Judgment : 13 February 2007

r e a s o n s f o r J U D G M E N T

Hon Lunn J (giving the reasons of the court) AUTONUMOUT The applicant seeks leave to appeal against a sentence of three years and four months imprisonment imposed upon him by Deputy Judge Adriana Tse in the District Court on 28 July 2006, following his plea of guilty to a single offence of robbery. The facts AUTONUMOUT The victim of the robbery, Madam Wong Mui, is the 78 years old mother of the applicant. She was robbed by the applicant on 11 May 2006, as she lay in her bed at her home. Earlier, on 14 and 28 April 2006, when the applicant had presented himself at her home she had refused to give the applicant any money. One of her tenants had reported the matter to the police on those occasions. On 11 May 2006 Madam Wong and her tenants had been woken at about 5 a.m. in the morning by the sound of persistent ringing of the doorbell and loud shouting outside the premises. That conduct was simply ignored by those inside the premises. However, when one of the tenants left the premises she was met by the applicant, who dashed inside. There, he confronted his mother as she lay in bed, blaming her for refusing to respond to his attempts to gain entrance and demanding money from her. On her refusal to give him money the applicant seized hold of Madam Wong's leg and tried to drag her out of her bed. When he failed in that attempt he struck her two blows with his fist to her back. Then, the applicant embarked upon a search of her bedroom taking \$300 that he found on a table in that room. Happily, Madam Wong is described as having sustained relatively very minor injuries . The reasons for sentence AUTONUMOUT In sentencing the applicant the judge cited the judgment of this court in R. v. Yau Kwok Tong [1987] HKLR 78 to support the proposition that, where no weapons were used or displayed, the appropriate starting point for robbery is four

years imprisonment. She went on to say that according to *R. v. Mo Kwong Sang* [1981] HKLR 610 and *The Attorney General v. Chan Fat Keung*, criminal appeal 20 of 1987 (unreported), the starting point for domestic robbery is five years and upwards. She said that she took a starting point of five years imprisonment and, for the single mitigating factor of a plea of guilty, she discounted sentence fully, so that the sentence imposed on the applicant was three years and four months imprisonment. Grounds of appeal against sentence AUTONUMOUT By ground 1 of the grounds of appeal against sentence it is submitted that the judge erred in taking a starting point of five years imprisonment given that no weapon was involved in the robbery. AUTONUMOUT By ground 2 it is contended on behalf of the applicant that the judge erred in citing the judgment of this court in *Yau Kwok Tong* in support of her assertions that the starting point for sentence in robbery where no weapons were used or displayed was four years imprisonment. It is said that in that case the court was describing the appropriate sentence at the top end of the tariff for robbery. Submissions on behalf of the applicant grounds of appeal against sentence AUTONUMOUT In support of the grounds of appeal against sentence Ms Monica Chow, whilst accepting that there were twin aggravating features to the commission of the robbery, namely an invasion of domestic premises and some violence used towards the victim, submits that the appropriate starting point that the judge ought to have taken was one of four years imprisonment. Of the factor of an invasion of domestic premises Ms Chow points out that the applicant was no stranger, rather he was the son of the victim of the robbery. She points out that in *Yau Kwok Tung* this court was dealing with a case in which there were aggravating features of the commission of the robbery of a man and his wife, namely that the offence took place in the early hours of the morning and that the woman had been very frightened. It was in those circumstances that the then Chief Justice Roberts had said of the sentence of four years imprisonment imposed upon the appellant for the offence of robbery that : (see [1987] HKLR 782 at 783 A sentence of four years, in the circumstances of this case, is at the top end of the tariff for robberies where weapons are not displayed. Nevertheless, the offence took place at night, the victims were frightened and we do not regard it is so manifestly excessive that it will be proper for us to interfere with it. AUTONUMOUT Chow contends that in taking a starting point of five years imprisonment the judge was taking the same starting point said to be appropriate for an armed robbery, that is to say one in which a knife or other dangerous weapon was carried, citing in support the judgment of this court in *Mo Kwong Sang* [1981] HKLR

610. Also, in support of that submission Ms Chow has referred to the judgments of this court in *HKSAR v. Lam Ka Hung*, CACC294/2003 (unreported), *HKSAR v. On Ling* [2005] 1 HKC 227 and *HKSAR v. Ting Chiu* and another, CACC174/2003 (unreported). AUTONUMOUT In *Lam Ka Hung* the handbag of a female victim of 57 years of age had been snatched as she made her way home at 7:15 p.m. on the 3rd floor of her residential building. In the course of a struggle both she and the robber fell to the ground. She sustained a minor abrasion to a finger. This court said the trial judge had erred in taking a starting point of five years imprisonment and said that the appropriate starting point was four years imprisonment. In *On Ling* in the evening a 45-year-old male victim of the robbery approached and waited at a bus stop in Tai Po at which the appellant and his co-accused, both fellow illegal immigrants,

were waiting. The applicant pointed a rolled-up newspaper at the victim's stomach and declared robbery. The frightened victim fell to the ground dropping his bag, which the robbers seized and then escaped. In *Ting Chiu* the victims of the robbery were a middle-aged couple who were walking in the vicinity of Lion Rock at about midday. There they were confronted by four robbers, who took their cash and personal valuables. This court said in each of those cases that the appropriate starting point in those circumstances was one of four years imprisonment and not the five years imprisonment taken by the judge as a starting point. The submissions made on behalf of the respondent AUTONUMOUT Lai submits on behalf of the respondent that the judge was correct to identify as aggravating features the fact that in the commission of the robbery the applicant had invaded domestic premises and that he had visited violence upon the victim. She submits that the judgment of this court in *Yau Kwok Tung* does not create a ceiling of four years imprisonment for unarmed robberies. In support, she cites the judgments of this court in *R. v. Luang Po Chuen*, CACC107/1987 (unreported) and *R. v. Oi Ho Pa Yee*, CACC480/1993. She points out that in *Luang Po Chuen* that the victim had been struck by the robber on her head having been confronted at 11:45 p.m. in the communal staircase of the building in which she lived. The court did not interfere with the imposition of a sentence of four years and six months imprisonment imposed after trial. In *Oi Ho Pa Yee* the robbery was committed by two illegal immigrants in domestic premises in the small hours of the morning during which the 78-year-old victim had been overpowered, bound up and gagged. In arriving at a sentence of four years imprisonment the judge had given a discount of one year and three months imprisonment for the applicant's plea of guilty. This court increased the sentence to one of five years imprisonment to reflect the aggravating features of the commission of the robbery. A consideration of the submissions AUTONUMOUT There is no dispute that there were aggravating features in the commission of the robbery by the applicant. Firstly, the invasion of domestic premises, in this case the victim's bedroom itself. Secondly, violence was done to the victim, an attempt was made to drag her out of her bed and she was struck a couple of blows with the fist on her back. Thirdly, the victim was an elderly woman of 78 years of age. AUTONUMOUT In addition, in determining the appropriate starting point for sentence the court was entitled to have regard to the fact that the applicant had been convicted of criminal offences on no less than 26 different occasions over a 40-year period. His offences include not only one of robbery, albeit a very long time ago, but also blackmail, theft and going equipped to steal. The applicant has received prison sentences or immediate effect on 15 of his previous appearances. AUTONUMOUT As this court has said on previous occasions the factual basis for sentence in any particular case is unique and references to judgments of this court in other cases even if of broadly similar circumstances, but in which no guideline for sentence is articulated, is not of any particular assistance. AUTONUMOUT In our judgment, in all the circumstances of this case, a particularly cowardly and offensive robbery, it cannot be said that the taking of a starting point by the judge of five years imprisonment, with the resulting imposition of a sentence of three years and four months imprisonment upon the applicant, was manifestly excessive. Accordingly, the application for leave to appeal against sentence is dismissed. (M. Stuart Moore) Vice President (Michael

Lunn) Judge of the Court of First Instance Ms Anna Y.K. Lai, SGC of Department of Justice, for HKSAR Ms Monica Chow, instructed by Messrs Chan & Tsu, assigned by DLA, for the Applicant 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 (#p# r p# (#p# &`#\$ 4or~ Rs~/ \*fn (Q\*<< jZS+ ,DGpH nPz- j^6\* ~ B; <(z&; Ym/ A8 xXED NFaF4\ B[UN` "O^B (BQ VhrLO a8]b5 ,7)a~D ^|r ~ B; ,7)a NFaF (BQ B[UN nPz- Ym/ A *fn jZS+ D\$ti \TvV UH2 & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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