

HONG KONG / JUDGMENT

HKSAR v. EME, PHILIPPE JEAN

COURT

Court of First Instance

DECIDED

10 November 2008

CASE / FILE NUMBER

HCMA141/2008

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bjbj HCMA141/2008 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 141 OF 2008 (ON APPEAL FROM ESCC155/2008)

BETWEEN HKSAR Respondent and EME, PHILIPPE JEAN Appellant

Before: Deputy High Court Judge Line in Court Dates of Hearing: 27 March 2008, 8 October 2008 & 10 November 2008 Date of Judgment: 10 November 2008

JUDGMENT

This is an appeal against a sentence of imprisonment passed for driving whilst disqualified and without insurance. The facts leading to it can be stated in this way: that on 1 August 2007, the police stopped the appellant driving a red Ferrari. He did not have any insurance for it and he was proceeded against. On 3 October, he was disqualified by a court from driving. On 7 December 2007, he was driving the same red Ferrari again and therefore was prosecuted for these offences. The magistrate sentenced him to a total amount of imprisonment of 3 months. He pleaded guilty. A starting-point of 4 months' imprisonment had been taken. This is a rehearing and I am in a very different position today from that which the magistrate was in. To him, he had a man who had shown an arrogant disregard of the law in front of him and there were some not very well supported submissions made to him about the effect that imprisonment would have upon his job. The appellant holds a responsible job as a man in charge of the department in a company dealing with equity derivatives. In front of me today, I have a man who has spent 34 days in prison and I have before me, well documented, what the consequences would be of an immediate custodial sentence. I want to say immediately that for the disregard of the law that this appellant has shown, he was bound to be locked up for some time. People who behave so have to go to prison .

The appellant, after 34 days in custody, comes here as a man now contrite and someone who, I am told, has learned his lesson. I believe that to be the case. That accords with common sense and my observation of him here in court. The appellant is a man of obvious ability, a fine outstanding sportsman; there is a probation report upon him that speaks of his character in good terms. The driving whilst disqualified was accompanied by no grave aggravating circumstances other than the bare-faced disregard of the court's order. In an ordinary case, I would have started at 3 months after trial. I do not think it needs a sentence of 4 months. If I had been the magistrate, I would have taken that as my starting point and I would have sentenced him to 2 months' imprisonment. I could make the appellant serve the small amount that remains, after crediting time spent in custody I am not going to do that because there is powerful mitigation to be found in the consequences of an immediate custodial sentence to this appellant. That is because I know by now reliable and documented evidence that as regards his employment, he would lose his job. That would have disastrous consequences for him. On the other hand, people do face those sort of disastrous consequences by going to prison for driving whilst disqualified. But it would not only be that. It would have a long-term effect upon his prospects of employment because in the job that he does, he is obliged to be licensed by the SFC. The material before me tells me that if he were to receive an immediate custodial sentence, the prospects of him being denied a licence or denied a licence for a longer term are substantially increased. The question is, does he have to serve any more time in prison. He did enjoy bail originally but on an adjourned hearing of this appeal before me, wise counsel prevailed, and he did not make a bail application. So the fact is today I can, I hope, do justice in what is a difficult case by acknowledging the 34 days in custody, and acknowledging the mitigation as to the effects of an immediate custodial sentence, and pass a sentence of community service. It seems to me that achieves a balance because the man has had the punishment of imprisonment and he can now put something back into the community, albeit in fairly moderate terms. I have an order of 70 hours in total in mind. I do not say the magistrate was wrong. I disagree with him slightly on the starting-point but that is of no great moment. The situation I am faced with is one that is different from him. I agree with him that conduct of this sort, where there is a disregard of the court order that is so blatant, will be met with custody and that message still applies even though on paper the result of this case is community service rather than imprisonment. So I shall alter the sentence. I shall quash the terms of imprisonment that were imposed and order that there be 70 hours community service on both of the charges to run concurrently. The periods of disqualification will stand (P Line)

Deputy High Court Judge Mr Frederick Chung, Senior Public Prosecutor, of the Department of Justice, for the Respondent Mr Clive Grossman, S C, instructed by Messrs Tanner De Witt for the Appellant

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