

HONG KONG / JUDGMENT

HKSAR v. EUGENE WILLIAMS AND ANOTHER

[2019] HKCA 39

COURT

Court of Appeal

DECIDED

4 January 2019

CASE / FILE NUMBER

CACC230/2018

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

bjbj CACC 230/2018

[2019] HKCA 39 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL CRIMINAL APPEAL NO 230 OF 2018 (ON APPEAL FROM DCCC NO 917
OF 2017)

BETWEEN HKSAR Respondent and EUGENE WILLIAMS 1st Applicant JACKSON DARIEN 2nd
Applicant

Before: Hon Zervos JA in Court Date of Hearing: 4 January 2019 Date of Judgment: 4 January 2019

J U D G M E N T

Hon Zervos JA (giving the Judgment of the Court): The two applicants were members of a gang that perpetrated a black money fraud on a victim who was swindled out of HK\$374,000. Three defendants stood trial in the District Court in relation to this case on two charges of conspiracy to obtain property by deception from the same victim. The 1st applicant was the 2nd defendant, and the 2nd applicant was the 3rd defendant. Charge 1 concerned only the 2nd applicant. It was alleged against him that between 15 and 23 January 2017, he conspired with a person known as Nancy and other persons unknown, to obtain the sum of HK\$370,000 by deception from the victim, by falsely representing to him:

- (i) that an authority officer of the United Nations Osu Sacra, namely, WILLIAMS Anthony (Williams), had entered Hong Kong with a luggage of cash in United States currency (the USD) on or about the 15th day of January, 2017; (ii) that Williams and the USD were detained by the Hong Kong Immigration Department; and (iii) that a total of \$370,000 Hong Kong currency was required for the release of Williams and to recover the USD, Charge 2 concerned all three defendants. It was alleged against them that between 23 January and 8 April 2017, they conspired together to obtain the sum of HK\$4,000 by deception from the victim, by falsely representing to him:
- (i) that the papers of banknotes size found inside a luggage were United States banknotes (the United States Banknotes) but were dyed in black for security reasons; (ii) that \$70,000 Hong Kong currency was needed to redeem the said luggage or else it will be returned to the United States; (iii) that the United States Banknotes have been cleaned; and (iv) that \$5,000 United States currency was needed to redeem the said luggage and the cleaned United States Banknotes, The three defendants pleaded guilty to the charge or charges that they faced. The 1st applicant was sentenced to 2 years, 7 months and 6 days imprisonment on Charge 2. The 2nd applicant was sentenced to a total of 2 years and 10 months imprisonment on Charges 1 and 2. The 1st and 2nd applicants both apply for leave to appeal against their sentences. The facts giving rise to the offences as contained in the summary of facts agreed to by the two applicants are as follows. The victim was purportedly befriended on Facebook by a person known as Catherine Sandra Foley. She claimed that she was Ghanaian. She told the victim that she wanted to deliver US\$12 million in cash and 120 kilogrammes of gold to Hong Kong and offered him 30% of the total value of the goods delivered for his assistance. On 15 January 2017, the victim received a telephone call from a person purporting to be an officer of the British Consulate who called herself Nancy. She told him that a person by the name of Anthony Williams had arrived in Hong Kong from Ghana with the US dollars but he had been detained by Hong Kong Immigration. Another person by the name of Dickson sent a WhatsApp message to the victim, requesting HK\$68,300 to facilitate the release of Anthony Williams. A meeting was arranged at Hong Kong International Airport where the victim met the 2nd applicant and handed over to him HK\$70,000 in cash. The victim received another telephone call from Nancy who told him that they needed to raise an additional sum of HK\$300,000. Dickson again sent a WhatsApp message to the victim and arranged two further payments of HK\$230,000 and HK\$70,000 in cash. On each occasion, the 2nd applicant received the money from the victim, and on the last payment, the 2nd applicant gave the victim a red suitcase. (Charge 1). In the red suitcase there were numerous black papers in the size of banknotes. The victim sent a WhatsApp message to Dickson about the contents of the red suitcase who informed him that the black papers were dyed US dollars and were in that state for security reasons. Dickson agreed to meet the victim at a hotel on 26 January 2017 to show him how to remove the black dye from the papers. The victim met the 2nd applicant as arranged and in a hotel room the 2nd applicant demonstrated to the victim how to remove the black dye on 10 papers by rubbing them with hand cream and a mixture of transparent fluid and hot water. After removing the dye, the papers were shown to be US

banknotes. The 2nd applicant told the victim that more of the transparent fluid was needed and that he would have to contact Nancy to purchase it from her. At the 2nd applicant's request, the victim left the red suitcase with him, containing the black papers. Nancy contacted the victim and offered to sell him the transparent fluid, but as he did not have the money, he declined the offer. Nancy contacted the victim again and told him that HK\$70,000 was needed to redeem the red suitcase, otherwise it would be sent overseas. On 6 March 2017, the victim received a WhatsApp message (later shown to have come from a telephone seized from the 1st defendant upon his arrest), requesting a meeting at the General Post Office. He was informed that the US banknotes in the red suitcase had been cleaned and that he could obtain the banknotes upon payment of US\$5,000. The victim went to the General Post Office as arranged and met the 1st defendant and the 1st applicant. They took the victim to the International Finance Centre where the victim handed over HK\$4,000 in cash to the 1st defendant in the presence of the 1st applicant. However, the victim was not given the banknotes. Another meeting was arranged by the 1st defendant for the victim to pay HK\$35,000 for the banknotes. By this stage, the victim had contacted the police and at the arranged meeting place the police arrested the 1st defendant and the 1st applicant. The 2nd applicant was not present but was later arrested by the police when he returned to Hong Kong. (Charge 2). From the mobile telephones seized from the three defendants, it was revealed that some of the WhatsApp messages between the 1st defendant and the victim were forwarded to the mobile telephones seized from the 1st applicant and the 2nd applicant. The victim lost a total amount of HK\$374,000, none of which had been recovered. I should say in passing that on the basis of the agreed facts it would seem that a single offence of conspiracy to defraud may have more appropriately reflected the object of the conspiracy and the criminality involved. This may have resulted in greater clarity and precision of the particulars of the false representations. In any event, the applicants admitted their involvement in this fraud when they entered their pleas of guilty. The 1st defendant and the 2nd applicant pleaded guilty at the earliest opportunity and were given a one third discount from their respective sentences. The 1st applicant pleaded guilty on the first day of trial and was given a 20% discount from his sentence. The judge was correct to limit his discount to 20% for his late plea of guilty. The 1st applicant is a Liberian national although he also holds a Mozambique passport. He came to Hong Kong in 2010 and was a Form 8 recognizance holder. He had five previous convictions, one for trafficking in a dangerous drug for which he received a sentence of 12 months imprisonment in August 2015, and four others, relating to the use of a forged identity document and making false representations to an immigration officer, for which he received a total of 15 months imprisonment in May 2017. The 2nd applicant is a Liberian national who was not a Form 8 recognizance holder at the time of the offence. He claimed to be in the music industry. He had a prior conviction of breach of condition of stay for which he received a term of imprisonment of 4 weeks, suspended for 3 years, in June 2014. His criminal record was in the name of Salifou Fofana. The judge was referred to various cases involving the sentences of defendants in relation to street deception or telephone deception: HKSAR v Huang Yu Huan [2002] 2 HKC 682; HKSAR v Li Shou Wen [2007] 3 HKC 273; HKSAR v Ng Kwok Wing,

CACC 398/2007; and HKSAR v Marshall Bill O, DCCC 92/2017. In respect of Charge 1, the judge adopted a starting point of 3 years and 6 months imprisonment, and in respect of Charge 2 of 3 years and 3 months imprisonment. As Charge 1 only related to the 2nd applicant, the judge sentenced him to 2 years and 4 months imprisonment after reducing the starting point by one third for his guilty plea. He similarly reduced the starting point on Charge 2 by one third to 2 years and 2 months imprisonment. Taking into account the totality principle, the judge ordered that 6 months of the sentence on Charge 2 to run consecutively to the sentence on Charge 1, thus resulting in a total sentence of 2 years and 10 months imprisonment. He also ordered that the suspended sentence imposed on the 2nd applicant on 12 June 2014 of 4 weeks imprisonment be activated. The judge sentenced the 1st applicant on Charge 2 to 2 years, 7 months and 6 days imprisonment after reducing the starting point by 20% for his late plea of guilty. It is to be noted that even though the judge was aware that the 1st applicant was a Form 8 recognizance holder at the time of the offence, his sentence was not enhanced for this aggravating factor. It is also the case that the 2nd applicant could have had his sentence enhanced as a foreigner coming to Hong Kong to commit a crime. This was an extremely elaborate and well planned fraud, involving the grooming of the victim over the internet, with extensive role playing by the gang members in order to beguile the victim into believing the whole arrangement was real. The 1st applicant complains that his sentence was too high in light of his limited involvement in the conspiracy. I find no substance in his complaint as he admitted that he was a party to the conspiracy as reflected in Charge 2. He also seeks the return of his mobile telephone which was forfeited by order of the court at the conclusion of his case. It appears that no request was made for the return of the mobile telephone to the 1st applicant and no objection was raised to it being forfeited. It was set out in the admitted facts that the 1st applicant's mobile telephone received from the 1st defendant some of the WhatsApp messages between the 1st defendant and the victim. There was therefore a connection between the mobile telephone and the offence in question. The undoing of the forfeiture order and the return of the 1st applicant's mobile telephone is not reasonably arguable. See HKSAR v Valencia [2018] 3 HKC 308. The 2nd applicant complains that his sentence was excessive and not commensurate to the criminality involved. The 2nd applicant admitted his involvement in the two conspiracies in which he played a prominent role. The overall sentence of 2 years and 10 months imprisonment may be considered to be lenient in light of the circumstances of the case. The two applicants have no cause for complaint against the sentences that were passed on them. Their applications are without merit and are accordingly refused. The applicants are reminded of their right to renew their applications for leave to the Court of Appeal, but they are also warned of the consequences of doing so, which may include a direction for any loss of time spent in custody pending their appeals, if the Court were to come to the view that there was no justification for the renewal of their applications. (Kevin Zervos) Justice of Appeal Mr Prakash L Daryanani, SPP of the Department of Justice, for the respondent The applicants appeared in person 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 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 h]g9 gdi< gdIe gd) gd) hRQ8 hw{v hf.u gd_lj |vp|pjpvp|v| gd%X

gd%X |x|x| hO8/ hO8/ hO8/ gd%X gdgk\$ hO8/ htzf htzf htzf gdgk\$ ht5(ht5(gdv :pL}
[Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/
theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V
O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE\} theme/theme/_rels/themeManager.xml.rels 5 6?\$Q
K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/
theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0"
encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://
schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2"
accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4"
accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> 0(a"t 0(a" setup
hca.dot Windows User Microsoft Office Word Judiciary Hong Kong Title <?xml version="1.0"
encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA"
xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"
xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></
b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem
ds:itemID="{60D221B4-2867-4BB2-945B-17C273771608}" xmlns:ds="http://
schemas.openxmlformats.org/officeDocument/2006/
customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/
officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word
97-2003 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=119451

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-eugene-williams-and-another-2019>

Prepared on 29 October 2026 · Esheria