

HONG KONG / JUDGMENT

HKSAR v. FANG XIANG

COURT

Court of First Instance

DECIDED

8 August 2007

CASE / FILE NUMBER

HCMA538/2007

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bjbj HCMA538/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.538 OF 2007 (ON APPEAL FROM STCC 3624 OF 2007)

BETWEEN HKSAR Respondent and FANG XIANG (appellant pleaded guilty to four charges of making a false representation to an immigration officer, contrary to section 42(1)(a) of the Immigration Ordinance (Charges 1, 2, 4 and 6) and two charges of using a false travel document, contrary to section 42(2)(b) of the Immigration Ordinance, Cap. 115 (Charges 3 and 5). He was sentenced to 12 months imprisonment on each charge. Six months of the sentence on Charge 2, three months each of the sentences on Charges 3 and 4; Charges 5 and 6 were ordered to be served consecutively, making a total of two years imprisonment. He now appeals his sentence.

AUTONUMOUT When the appellant presented a Chinese Permit in the name of Fang Xiang on the day in question, record check revealed that on several previous occasions he had entered Hong Kong using a different identity. He admitted he assumed a friend s identity applied for a false passport, and entered Hong Kong on those previous occasions as he had been refused permission to land under his true identity, that is in May 2006 (Charge

- 1) and June 2006 (Charge
- 2) with two further attempts to enter Hong Kong in July 2006 when permission to land was refused (Charges 3 to 6). Grounds of appeal AUTONUMOUT The appellant complained that the sentences were too severe. He said that his wife had given birth after he was jailed and he was the sole breadwinner of the family. Respondent s reply AUTONUMOUT Respondent s counsel submitted that 18 months starting point adopted by the magistrate was in line with the authorities. The magistrate had also considered mitigation advanced. The present offences involved four separate entries or attempted entries, total of two years imprisonment on a plea cannot be said to be manifestly excessive or wrong in principle. My judgment AUTONUMOUT In sentencing the appellant, the learned magistrate had considered the decisions in HKSAR v. Yim Lee Kuen, HCMA1187/2002 and HKSAR v. Lin Peiluan, HCMA373/2003. He correctly adopted starting points of 18 months imprisonment

for all the charges and gave one third discount for the appellant s guilty pleas. He ordered concurrent sentences for each pairs of offences, i.e. Charges 3 and 4, Charges 5 and

6. For separate and distinct offences he ordered partially consecutive sentences. The approach is entirely proper. AUTONUMOUT The mitigation advanced by the appellant today are mere repetition of those previously advanced before the magistrate, and these circumstances are quite common to a lot of appellants in this sort of cases. McMahon J in HKSAR v. Lui Weixiong, HCMA1115/2005 said this
7. The appellant instead relies upon humanitarian circumstances to seek a further reduction in his sentence. Those circumstances relate to his family. His mother is very old, his wife is ill, and his children are wholly dependant upon him. While he is in Hong Kong, they are without support in China.
8. Whilst one can sympathize with the circumstances of many illegal immigrants who arrive in Hong Kong from China, the law is quite clear. It is only in exceptional circumstances that humanitarian considerations can result in a reduction of sentence. The appellant s circumstances are not exceptional. The difficulties his family will face unfortunately are very common to the families of offenders imprisoned in Hong Kong. What is advanced by the appellant to me this morning and the letter of his wife in plea of mitigation does not constitute humanitarian considerations. AUTONUMOUT I affirm the sentences and dismiss this appeal. (M. Poon) Deputy High Court Judge Miss Ho May Yu, Lily, SGC, of Department of Justice, for the Respondent The Appellant, 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 &`#\$ XoOe&t\ XoOe&t\ XoOe&t\ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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