

HONG KONG / JUDGMENT

HKSAR v. FEN SHUICI

COURT

Court of First Instance

DECIDED

15 February 2007

CASE / FILE NUMBER

HCMA1180/2006

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bjbj HCMA 1180/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 1180 OF 2006

HKSAR and FEN Shuici

Before: Hon Wright, J., in Court Date of Hearing: 15 February 2007 Date of Judgment: 15 February
2007

JUDGMENT

The appellant appeals concurrent sentences of seven days imprisonment in respect of an offence of breach of condition of stay contrary to section 41 of the Immigration Ordinance, Cap. 115, and 15 months imprisonment for possession of a forged identity card contrary to s. 7A(1) of the Registration of Persons Ordinance, Cap. 177. The first offence arose when the appellant overstayed the period for which he was lawfully permitted to remain in Hong Kong. He was stopped by police and it was then that his status was revealed. He was subsequently searched and the forged identity card was found underneath the inner sole of one of his shoes. No complaint is made of the sentence on the first charge nor of the fact that the magistrate ordered that the sentences be served concurrently. The appeal is solely against the sentence on the second charge. The basis of the appeal is that the magistrate imposed the wrong sentence in the light of the decision in HKSAR v LI Chang-li [2005] 1 HKLRD 864. The Court of Appeal clearly distinguished a situation where a person is found in possession of a forged identity card and that where a forged identity card is used either to conceal identity or to obtain employment. It indicated that the appropriate sentence in the former situation is one of 12 months imprisonment, whilst in the latter one of 15 months imprisonment. In mitigation advanced on behalf of the appellant the magistrate was told, in terms, that the appellant had acquired the forged identity card with the

initial intention of using it to obtain employment. He can hardly be criticised, therefore, for finding "... there was no doubt whatsoever that the appellant had this forged identity card with him with a view to looking for a job in Hong Kong and that he intended to use it to cover up his unemployable status here." In this matter there was no evidence of actual use of the forged identity card by the appellant. Although the magistrate was justified in making his finding, that did not justify imposing the higher of the two sentences. The prosecution accepts that that is the course that should have been followed. The appeal is allowed to the extent that the sentence imposed on Charge 2 is varied to one of 12 months imprisonment. (A R WRIGHT) Judge of the Court of First Instance High Court Mr Harish Melwany, Senior Government Counsel of the Department of Justice, for the HKSAR Ms Cecilia Liang, instructed by M/s Kong & Chang on the instructions of the Director of Legal Aid for the appellant. 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 1udk 1udk i\$&8 EnS< EnS< HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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