

HONG KONG / JUDGMENT

HKSAR v. GABRIEL, MALOU LANTIN

COURT

Court of First Instance

DECIDED

25 August 2004

CASE / FILE NUMBER

HCMA716/2004

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bjbj Paa HCMA 716/2004 IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 716 OF 2004
(ON APPEAL FROM ESCC 2374 OF 2004)

BETWEEN HKSAR Respondent and GABRIEL, MALOU LANTIN Appellant

Before: Hon Beeson J in Court Date of Hearing: 25 August 2004 Date of Judgment: 25 August 2004

J U D G M E N T

The Appellant pleaded guilty in the Magistrate to two counts, one of Breach of Deportation Order and one of Theft. The theft was a pickpocketing. She was sentenced to 20 months imprisonment for the breach of deportation order and 12 months for the theft. 6 months of the sentence on the second charge was to run consecutively to the sentence on the first charge, making a total of 26 months imprisonment. The Appellant appeals against sentence. Her reason for appealing is that she requires leniency because her child was left by her husband, her mother was ill, and she needed to do it for her children. That is substantially the mitigation that was put before the Magistrate. The Magistrate sentenced bearing in mind the record of this Appellant. She has been before the court in Hong Kong on 6 previous occasions since 1989. Seven of those offences are offences of dishonesty. The last offences dealt with were in 1997 were attempted theft and handling stolen goods, plus theft, handling stolen goods and a breach of deportation order. The Magistrate noted from her record that the Appellant has a number of aliases and that it appears she comes to Hong Kong from the Philippines for the purpose of stealing. The authorities indicate that for a first offence of Breach the Deportation Order, a starting point of 27 months would be appropriate. As this was a second offence the Magistrate took 30 months as the starting point and reduced it to 20 months for the plea of guilty. On the pickpocketing charge, the

Magistrate noted that the normal starting point for sentence is 12-15 months imprisonment. The starting point should be increased for any aggravating factors. One such aggravating factor is where the public, through no fault of their own, are at risk, such as in crowded places like department stores, which was where this particular offence took place. HKSAR v Huynh Van Dung, HCMA 270/2001 indicates that a 24 months starting point is appropriate where the offender is a persistent offender, as this Appellant is. The Magistrate took 18 months as the starting point and reduced it to 12 months for the plea of guilty. The Magistrate considered consecutive sentences were appropriate and that is the proper principle to follow. However the Magistrate also considered totality and ordered that 6 months of the 12 months on Charge 1 should run consecutively to the term of 20 months on Charge 2. The Magistrate took account of the facts of the case, the sentencing authorities and also the circumstances of the Appellant. The Appellant is not in a position to seek leniency, given her previous record. This appeal against sentence is dismissed.

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