

HONG KONG / JUDGMENT

HKSAR v. GHULAM FAREED

COURT

Court of First Instance

DECIDED

22 September 2010

CASE / FILE NUMBER

HCMA382/2010

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bjbj HCMA 382/2010 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 382 OF 2010 (ON APPEAL FROM KCCC 7707 of 2007)

BETWEEN HKSAR Respondent and GHULAM FAREED Appellant

Before: Deputy High Court Judge A. Chan in Court Date of Hearing: 25 June 2010, 10 August 2010
Date of Judgment: 10 August 2010 Date of Reasons for Judgment: 22 September 2010

REASONS FOR JUDGMENT

On 9 April 2010, the Appellant pleaded guilty before Mr. Anthony Kwok, Principle Magistrate, to one count of breach of deportation order (charge 1) and one count of unlawful remaining in Hong Kong (charge 2). He was sentenced to 18 months imprisonment on charge 1 and 15 months imprisonment on charge 2. Mr. Kwok further ordered 6 months of the sentence on charge 2 to run consecutively to the 18 months on charge 1. The total sentence was therefore one of 2 years imprisonment. The Appellant appealed against his sentence on the ground that it was too severe. Two grounds had been put forward:

- (i) his mother was sick and; (ii) he was promised a light sentence by Magistrate Mr. Thomas for pleading guilty. For the first ground, the Appellant submitted one medical report dated 2 February 2009 from one Dr. Sarfraz Hussain Syed (MBBS, Diploma Paithology) stating that the Appellant's mother had been suffering from diabetes mellitus and acute myocardial infarction. The mother's medical condition was placed before Mr. Kwok. The Appellant in fact informed Mr. Kwok that his mother had fallen ill for the past two to three years. As Mr. Kwok observed, the Appellant was fully aware of his mother's condition before his departure for Hong Kong and there was no medical evidence indicating that the mother was in

terminal decline, he was not satisfied this was an appropriate one to reduce the Appellant's sentence on humanitarian reason. I agree. I also have reservation about this doctor's qualification, a diploma in pathology rather than pathology as depicted in the report's letterhead. In so far as the second ground is concerned, I have listened to all the recordings when the Appellant came before Mr. I. Thomas before his retirement. It is correct that at one stage Mr. I. Thomas did suggest that he was prepared to consider a lighter sentence if the Appellant entered a guilty plea and good grounds were to be put forward by his lawyer. However Mr. I. Thomas's suggestion was quickly turned down by the Appellant as he maintained his innocence. In fact, on the next hearing, Mr. I. Thomas withdrew that suggestion unequivocally and expressed the view that he was bound by previous authorities. There was no substance in the Appellant's second ground. In conclusion, the Appellant's appeal against sentence is dismissed. (Andrew Chan) Deputy High Court Judge Miss Lily Ho, Senior Public Prosecutor of Department of Justice, for the Respondent The Appellant in person

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