

HONG KONG / JUDGMENT

HKSAR v. HETTI ARACHCHIGE, SUMITH JAYASHANTHE

COURT

Court of First Instance

DECIDED

7 July 2011

CASE / FILE NUMBER

HCMA333/2011

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bjbj HCMA333/2011 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 333 OF
2011 (ON APPEAL FROM STCC 1319 OF 2011)

BETWEEN HKSAR Respondent and HETTI ARACHCHIGE, SUMITH Appellant JAYASHANTHE

Before : Hon Saw J in Court Date of Hearing : 7 July 2011 Date of Judgment : 7 July 2011

J U D G M E N T

AUTONUMOUT On 23 March 2011 the appellant pleaded guilty before Mr Andrew Ma, Principal Magistrate, to a charge of making a false representation to an immigration assistant, contrary to section 42(1)(a) of the Immigration Ordinance, Cap. 115, Laws of Hong Kong. He was sentenced to be imprisoned for 12 months. AUTONUMOUT This is his appeal against that sentence.

Background

AUTONUMOUT The appellant, the holder of a Sri Lanka passport, entered Hong Kong on 9 October 2009 using that document. He overstayed the visa that was granted to him. On 10 November that year he surrendered to the police. A routine fingerprint examination revealed that on 11 June 2005 he had entered Hong Kong by using a passport of another person whose surname was Jayasinge who as it transpired was his cousin. Thus it was he was charged that on 11 June 2005 he falsely represented to an immigration officer that he was that person. AUTONUMOUT Subsequent to surrendering to the police on 10 November 2009 he made application to be treated as a torture claimant and for political asylum. I am advised that the torture claimant application

has been withdrawn and the other application is pending. AUTONUMOUT When sentencing the appellant, the magistrate took as a starting point a sentence of 18 months imprisonment. He gave full credit to the appellant for his plea of guilty and reduced that sentence to 12 months imprisonment. When doing so the magistrate observed that the fact that the appellant had surrendered to the police on this occasion had no bearing on the offence with which he was then charged. AUTONUMOUT When adopting the starting point he did the magistrate said Those making false representation as to identity should expect the same punishment for using a false travel document, and the usual term is 12 months imprisonment after a plea of guilty : HKSAR v Chu Man [1999] 1 HKC 189. AUTONUMOUT Before me today the appellant seeks to have his sentence reduced. He does so by reasons of the fact he says that his wife is suffering from an illness in Sri Lanka and needs his assistance. This was a matter that the magistrate was alerted to when he imposed the sentence he did. He also submits that he is now in a position to return to Sri Lanka and take up employment. Be that as it may, the sentence was entirely proper and consistent with accepted levels of sentences for this offence. The appeal is dismissed. (Darryl Saw) Judge of the Court of First Instance, High Court Ms Betty Fu, Ag SPP of the Department of Jus 1udk 1udk gd1- hXY4 gd+> gdT0 h.%1 hXY4 hXY4 hXY4 xpxg^UgU hspa hspa hspa hXY4 h.%1 hMWG h.%1 hw* h@iv ne\ eT hfx3 h'co h'Ml ytyk ktytyfy^Z^Z^ &`#\$ oxoha N O P Q R S T U V [Content\_Types].xml Iw}, \$yi} \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/ theme1.xml w toc'v )I` n 3Vq%#q x}r :T'ZaG I u3 L+M2 e\O* \$*c?)6-r IqbJ#x ,AGm T[XF64 E)`# R>QD =(K& =al- 4vfa 0%M0 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"/> k1B[p k1B[& 6" CACV Jeannie MY MokSo ABC.dot setup Microsoft Office Word Judiciary CACV Title Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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