

HONG KONG / JUDGMENT

HKSAR v. HO YUNG KEUNG

COURT

Court of Appeal

DECIDED

4 September 2007

CASE / FILE NUMBER

CACC35/2007

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bjbj R7_)

Before: Hon Yeung JA and Tong J in Court Date of Hearing: 24 August 2007 Date of Judgment: 24 August 2007 Date of Handing Down Reasons for Judgment: 4 September 2007 reasons for judgment Hon Yeung JA (giving reasons for judgment of the Court): The appellant, Ho Yung Keung, having pleaded guilty in the District Court before Deputy Judge S T Poon to four counts of trafficking in a dangerous drugs, was sentenced to 40 months imprisonment in respect of each count, to run concurrently. He appealed against sentence with leave granted by Tang VP. The appellant suggested that the sentences were manifestly excessive as another accused, who was arrested together with him, was only sentenced to 16 months imprisonment for four charges of trafficking in a dangerous drugs. The appellant, on three separate occasions, supplied to undercover police officers packets of heroin of quantities ranging between 0.04 and 0.06 gramme. When he was arrested, he swallowed 11 packets of heroin. When those packets were recovered from his excrement, they were found to contain 0.77 gramme of a mixture containing 0.16 gramme of heroin. The appellant is 29 years old and has 36 previous conviction, most of them were drug related, including four for trafficking in a dangerous drugs. The judge took the view that the appellant was a professional drug dealer and that the offences were committed on separate occasions. The judge also emphasized the appellant's long list of previous convictions. Having correctly identified the sentence guideline of 2-5 years imprisonment for quantities of under 10 grammes of heroin as laid down in Lau Tak Ming [1990] 2 HKLR 370, the judge took a starting for 5 years imprisonment and reduced it by one-third on account of the guilty pleas. The judge further ordered the sentences to run concurrently. Whilst there could be aggravating factors to justify an enhanced sentence, drug offences should primarily be sentenced in relation to the quantities of drugs involved. The tariff of 5 years imprisonment, as laid down in Lau Tak Ming [1990] 2 HKLR 370, should be more appropriately applied to cases involving close to 10 grammes of heroin and not those involving as little as 0.04 gramme. There were aggravating factors as identified by the judge, in particular the number of the appellant's previous convictions. The judge was also right in pointing out that as the offences were committed on separate occasions, at least part of the sentences should run consecutively. The fact that another

accused in a similar case received a more lenient sentence is not a ground for interfering with what is otherwise a proper sentence. However, we are persuaded that the 5 years starting point for each of the offences is manifestly excessive. In the light of the small quantity involved, we are persuaded that a 2 year starting point for each of the charges would be more appropriate. Bearing in mind the aggravating factors identified by the judge, we take the view that an overall starting point should be about 3 years and 8 months imprisonment. The appellant pleaded guilty and should be entitled to the one-third discount. The total sentence should therefore be 29 months imprisonment. We therefore allow the appeal and reduce the sentence on each of the four charges to 20 months imprisonment. We also order 3 months for each of the 20 months on the 2nd to 4th charges to run consecutively to the 20 months on the 1st charge. The total sentence is therefore reduced from 40 months to 29 months imprisonment and the appeal is allowed to the extent indicated. (W Yeung) Justice of Appeal (Louis Tong) Judge of The Court of First Instance Mr Isaac Tam, SGC of Department of Justice for the Respondent. Applicant: In person, Present. 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 1Vt^ H; < & 6" ABC final.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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