

HONG KONG / JUDGMENT

# HKSAR v. HONG YINGJUN

## COURT

Court of First Instance

## DECIDED

9 September 2008

## CASE / FILE NUMBER

HCMA594/2008

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bjbj HCMA594/2008 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 594 OF 2008 (ON APPEAL FROM STCC 4197 OF 2008)

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BETWEEN HKSAR Respondent and HONG YINGJUN ( \*m f The appellant appeals against the sentences totalling 14 months imprisonment upon her by Mr Jenkins on 11 June 2008 at Shatin Magistrates Court following her pleas of guilty to one charge of using a false travel document, contrary to section 42(2)(b) of the Immigration Ordinance, Cap. 115 (Charge

- 1) and three charges of making a false representation either to an Immigration Assistant or an Immigration Officer, contrary to section 42(1)(a) of the Immigration Ordinance, Cap. 115 (Charges 2 to 4). AUTONUMOUT In January 1999, the appellant, a Mainland resident, was arrested in Hong Kong and following her conviction the same month for breach of the condition of her stay she was repatriated to the Mainland in February. AUTONUMOUT In order to conceal her record from the Hong Kong Immigration authority, she obtained a Mainland two-way permit in another name, bearing her photograph but a date of birth which was not her own. AUTONUMOUT She used this false two-way permit to enter Hong Kong on 25 June 1999 (Charge 1) and falsely represented her identity to an Immigration Assistant (Charge 2). She gained entry into Hong Kong but in July was convicted of using an identity card relating to another person and breached her conditions of stay and she was sentenced to a total of nine months imprisonment. In January 2000, after serving her sentence, she was again repatriated to the Mainland. AUTONUMOUT Undeterred she attempted to gain entry to Hong Kong using the same false identity on 13 July 2000 (Charge
- 3) but she was refused permission to land. AUTONUMOUT She then obtained a new Chinese two-way permit, again bearing a name which was not her own, and a false date of birth. She presented that to an Immigration Assistant when she arrived in Hong Kong in 7 April 2005 (Charge 4). AUTONUMOUT She was permitted to enter Hong Kong, but on 6 December 2007, she was convicted of two charges of using a forged identity card and sentenced to a total of 10 months imprisonment. AUTONUMOUT The current offences came to light at the

conclusion of those sentences when a record check was made prior to her repatriation. AUTONUMOUT The appellant appeals on the ground that her sentences were too severe bearing in mind that she had been sentenced to prison to 10 months in 2007 and was only prosecuted for these current offences on her release. She also claimed that her mother was sick with no one else to look after her and that she had lost contact with her two children who were unable to go to school as a result of her imprisonment. They are both teenagers. AUTONUMOUT The learned magistrate expressly referred to what he had been told about the appellant's two teenage children and that she had lost contact with them since her imprisonment in 2007. AUTONUMOUT Insofar as sentences concerned, he said this In respect of Charge 4 I took 18 months imprisonment as the starting point, which is the starting point suggested in HKSAR v Yim Lee Kuen HCMA 1187/2002 for mainlanders using false 2-way permits to enter Hong Kong. I discounted the sentence by 6 months to reflect the defendant's guilty plea. In respect of Charges 1-3 I took a lower starting point of 9 months imprisonment given the acknowledgement in Yim Kuen that such starting points were being adopted prior to 28 February 2003 (para 4 & 20 of the judgment). These sentences were reduced to 6 months to reflect the defendant's guilty pleas. Whilst it was not the fault of the prosecution that the defendant had not faced the 4 charges at the same time as the charges she faced in 2007, I considered it appropriate notionally to sentence her as if I had been dealing with all matters together in order to reflect totality. If I had done so I consider an overall sentence of 24 months should have been imposed. By the time I came to sentence the defendant she had already served the 10 months imprisonment imposed in 2007 leaving her to serve an additional 14 months for Charges 1-4. I achieved that by imposing concurrent sentences of 6 months on Charges 1-3 and ordering 8 months of the 12 month sentence on Charge 4 to run consecutive to the sentences on Charges 1-3. AUTONUMOUT In my view the magistrate's reasoning cannot be faulted nor can the sentences he imposed. As can be seen he expressly took into account the sentence of 10 months imprisonment imposed on the appellant in November 2007. AUTONUMOUT It is understandable that the appellant should be concerned about her mother and her teenage children but she would have been well aware that by her persistent attempts to enter Hong Kong illegally, she was risking imprisonment which would deprive them of her support. AUTONUMOUT These circumstances do not justify any reduction in the terms of imprisonment imposed upon her. AUTONUMOUT I dismiss the appeals against sentence. (P.K.M. Longley) Deputy High Court Judge Ms Ho May Yu, Lily, SPP of the Department of Justice, for HKSAR Appellant in person, present PAGE - PAGE A B C D E F G 1udk 1udk &`#\$ "@AB & 6" ABC.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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