

HONG KONG / JUDGMENT

HKSAR v. HUANG BIAO

COURT

Court of Appeal

DECIDED

29 November 2007

CASE / FILE NUMBER

CACC21/2007

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bjbj

Before: Hon Stuart-Moore VP and Beeson J Date of Hearing: 29 November 2007 Date of Judgment: 29 November 2007 J U D G M E N T Stuart-Moore, macrobutton nomacro VP (giving the judgment of the Court): The appellant was charged in the District Court with offences of handling stolen goods, burglary and remaining in Hong Kong without the authority of the Director of Immigration after having landed unlawfully in Hong Kong (charges 1, 2 and 7 respectively). The appellant pleaded guilty to the 7th charge on 8 January 2007. On 11 January 2007 the appellant was convicted on the other charges following a trial before Deputy Judge Mierczak. A sentence totalling 4 years and 9 months imprisonment was imposed. On 23 August 2007, I granted leave to appeal against the sentence of 2 years imprisonment imposed on the 1st charge which related to the appellant s dishonest receipt of an Octopus card which had been stolen in the course of a burglary. Plainly, this was a sentence far in excess of an appropriate level of sentence for such an offence and the respondent has responsibly not sought to support it. We consider that a sentence of 6 months imprisonment was appropriate on this charge in the particular circumstances of the case. This will not, however, bring any comfort to the appellant who, on the 2nd charge was sentenced to 3 years imprisonment for the nighttime burglary of residential premises. Whilst the judge made an order that 12 months of sentence on the 1st charge should run consecutively to the burglary sentence (making 4 years imprisonment), we propose to order that the sentence for burglary should run consecutively to the reduced sentence for handling stolen goods, making 3 years imprisonment in all on these two charges. The final charge with which we are concerned is one on which this court has consistently encouraged the imposition of a consecutive sentence of 15 months imprisonment after a plea of guilty. We shall, therefore, again interfere with the judge s order, which was to make only 9 months of this sentence consecutive to the other sentence, by making the sentence on the 7th charge wholly consecutive to the other sentences. In the result, the appellant s sentence will remain, in totality, the same. In coming to our conclusion, we have, of course, considered the appellant s homemade grounds of appeal which provided no assistance whatever and certainly no basis for making any reduction in the overall sentence he is serving. His complaints against trial counsel were unfounded and the suggestion that he has all along

been remorseful is utter nonsense. If he had admitted the two offences of dishonesty, his sentence would have been considerably less. Accordingly, the appeal against sentence is allowed on the 1st charge and we shall reduce the 2-year sentence to 6 months imprisonment. However, the total sentence of 4 years and 9 months imprisonment will remain, in the way we have indicated, by maintaining the 3-year sentence on the 2nd charge and the sentence of 15 months imprisonment on the 7th charge but we shall order that these sentences should be served consecutively to each other and also to the sentence of 6 months imprisonment on the 1st charge. (M. Stuart-Moore) macrobutton nomacro Vice-President (C-M Beeson) Judge of the Court of First Instance Mr Tam Sze-lok, SGC, of the Department of Justice, for the Respondent. The Appellant, in person. PAGE - PAGE - A B C D E F G H I J K L 1udk 1udk 1udk D E F G H I J K L M N O P Q R S T U V i\$&`G Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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