

HONG KONG / JUDGMENT

HKSAR v. IBRAR MUHAMMAD

[2021] HKCFI 92

COURT

Court of First Instance

DECIDED

30 December 2020

CASE / FILE NUMBER

HCMA244/2020

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HCMA 244/2020

[2021] HKCFI 92 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 244 OF 2020 (ON APPEAL
FROM KCCC 1093 OF 2020)

BETWEEN HKSAR Respondent and IBRAR MUHAMMAD Appellant

Before: The Honourable Madam Justice Toh in Court Date of Hearing: 30 December 2020 Date of
Judgment: 30 December 2020

J U D G M E N T

The Appellant had pleaded guilty to one charge of taking prohibited employment, contrary to sections 38AA(1)(a) and 38AA(2) of the Immigration Ordinance, Cap. 115. He was sentenced to 17 months' imprisonment and appealed against that sentence. The facts, he admitted, were that on 19 May 2020, he was seen moving boxes of vegetables from the back of a heavy goods vehicle in Kowloon City. Upon enquiry, the Appellant was found to be a Form 8 holder. The driver of the heavy goods vehicle confirmed that he delivered fresh vegetables from Shenzhen to various shops in Hong Kong, and that porters were be arranged to help for the delivery. As it had emerged from the submissions of counsel for the Respondent, Mr Chan, the Appellant had originally been arrested by the police on 16 February 2016 for being an illegal immigrant. He lodged a non-refoulment protection claim in March 2016 and was released on recognizance thus he was a Form 8 holder. And he was not allowed to take up any employment whether paid or unpaid. The Appellant had one previous conviction for taking prohibited employment and was

sentenced to 15 months' imprisonment in December 2017. At the hearing before the learned Magistrate in this case, the Appellant's lawyer submitted to the learned Magistrate that the Appellant had spent three-and-a-half months in an Immigration detention centre and therefore invited the court to take this into account when considering sentence. It was revealed to the learned Magistrate that the detention was for an unrelated matter, his detention in fact was for a previous conviction which caused him to be detained for a period of time after his release. So the learned Magistrate, after considering the facts of the case, the previous conviction of the Appellant, decided at the end of the day, to give him one month reduction and sentenced him to 17 months imprisonment. The sentence of 18 months prior to the reduction is not manifestly excessive, and Mr Chan submitted that in the case of *HKSAR v Usman Butt* that a 15-month imprisonment is required for this type of offence and repeated offences is clearly an aggravating factor which is also the case here. So the learned Magistrate was not wrong to adopt an 18-month sentence as a starting point. As far as the period of administrative detention is concerned, it is related to something not connected to this case. As Mr Chan correctly pointed out under section 67A(1A) of the Criminal Procedure Ordinance, Cap. 221, it says specifically that period of detention must be immediately prior to his first appearance in any proceeding relating to that offence, and that the period of detention is in connection with this offence. It is clear that neither of the element applied in this case, as Mr Chan pointed out, that administrative detention was over a year prior to this offence. So it is a fact under the law the learned Magistrate did not have to give him a discount, however, the learned Magistrate did so and gave him one month off the original sentence of 18 months. I cannot see any grounds for interfering with the learned Magistrate's sentence. As for the humanitarian ground pleaded by the Appellant this morning that his father is not well, I am afraid that it does not constitute a humanitarian ground, so the appeal is dismissed. (Esther Toh) Judge of the Court of First Instance High Court Mr Jeff Chan, PP of the Department of Justice, for the Respondent The Appellant acting in person

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