

HONG KONG / JUDGMENT

HKSAR v. KO HEI PING

COURT

Court of First Instance

DECIDED

1 June 2007

CASE / FILE NUMBER

HCMA312/2007

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bjbj HCMA 312/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 312 OF 2007

HKSAR and KO Hei-ping

Before: Hon Wright J in Court Date of Hearing: 1 June 2007 Date of Judgment: 1 June 2007

JUDGMENT

The appellant was convicted after trial on one charge of remaining unlawfully in Hong Kong. He was represented at trial by a duty lawyer. He was sentenced to serve a period of two years and three months imprisonment. He appeals the conviction and sentence. The evidence was that the appellant was stopped by a police officer in the street on the 12 January 2007. He was asked for his identity card to which he responded that he did not have one. The police officer asked him what he was doing there: the appellant said that he had sneaked into Hong Kong from the railway station. The appellant gave evidence in which claimed that he had the right to be in Hong Kong having been born here. The magistrate correctly placed no weight on this assertion but considered, and rejected, the appellant's claim that he had memories of having lived in Hong Kong on previous occasions at different locations. The magistrate accepted the police officer's evidence as to what the appellant had said to him. He took the appellant's statement to the police officer that he had "sneaked into" Hong Kong as meaning he had entered unlawfully. Rightly, the magistrate took the view that if the appellant in fact had the right to land in Hong Kong or the right of abode here, he needed no permission to land and therefore did not need to have sneaked into Hong Kong. At that stage, of course, the magistrate was unaware that the appellant had been convicted on three previous occasions, 1993, 2004 and 2005, of the offence of unlawfully remaining in Hong Kong and, on each occasion, had been sentenced to periods of incarceration.

Those unlawful visits to Hong Kong may well account for the appellant's memory of having been present here in the past. The appellant was correctly convicted. The appellant has a total of six previous criminal convictions of which three relate to his having unlawfully remained in Hong Kong. The sentence is entirely appropriate. The appeal against conviction and sentence is dismissed. (A R WRIGHT) Judge of the Court of First Instance High Court Ms Bianca Cheng, Senior Government Counsel of the Department of Justice, for the HKSAR Appellant in person

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