

HONG KONG / JUDGMENT

HKSAR v. KUNG WAI TAT

COURT

Court of First Instance

DECIDED

20 March 2007

CASE / FILE NUMBER

HCMA1055/2006

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bjbj

1) Appellant

Coram: Deputy High Court Judge Line in Court Dates of Hearing: 20 March 2007 Date of Judgment: 20 March 2007

J U D G M E N T

1. This is an appeal against a sentence of 2 weeks imprisonment, which was imposed upon the Appellant for operating unlawful gambling in a street, contrary to section 13(1) of the Gambling Ordinance. He was operating a game of pai ka in a small public park near a market where the players were mostly, what one might describe as, old boys, a substantial number of them being pensioners.
2. He had pleaded guilty. The commission he took was \$40 a round and he had \$360 worth of commission money upon him. He had no previous convictions for anything other than straightforward gambling and all of those were for gambling in places not being a gambling establishment.
3. From my recollection of dealing with such cases when I was a Magistrate, one would not expect an immediate custodial sentence in those circumstances. I inquired today in court whether my recollection is either faulty or has been overtaken by subsequent events, and nothing has emerged to make me think otherwise.

4. The Magistrate mentioned in his reasons for sentence that he sought guidance from the case of Tsang Ling-yim MA1022/99 because that case said that in all but minor cases an immediate custodial sentence should be considered. However, that was a case concerning a gambling establishment. That has a 7 year maximum, whereas the offence of operating gambling in the street has a maximum of only 2 years.
5. In the circumstances, therefore, I shall allow this appeal against sentence and impose a fine.
6. I am told, and I have no reason to doubt, that the going rate, with no previous convictions for such an offence on a plea of guilty, is a fine of \$3,000 but with the previous convictions it would rise to \$5,000, even if the previous convictions are only for gambling, as in this case. Accordingly, I shall quash the sentence of 2 weeks imprisonment and substitute a fine of \$5,000. That can at his counsel s invitation come from his bail money. (P Line) Deputy High Court Judge Ms Ada Chan, Senior Government Counsel (Ag), of the Department of Justice, for the Respondent Mr Alex Ng, instructed by Messrs Littlewoods, for the Appellant PAGE - PAGE CRT19/20.3.2007/DB HCMA1055/2006/Reasons for Judgment A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V & `#\$ JUDGE.DOT setup Microsoft Word 9.0 e|r judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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