

HONG KONG / JUDGMENT

HKSAR v. LAM FUNG

COURT

Court of First Instance

DECIDED

4 October 2000

CASE / FILE NUMBER

HCMA905/2000

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bjbj HCMA 905/2000 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 905 OF 2000 (ON APPEAL FROM KTCC 1718/2000)

BETWEEN HKSAR Respondent and LAM FUNG Appellant

Before: Hon Beeson J in Court Date of Hearing: 4 October 2000 Date of Judgment: 4 October 2000

J U D G M E N T

This Appellant appeals against sentences of 8 months imposed on her on each of two charges; one of Using a False Travel Document (contrary to S. 42(2)(b) of the Immigration Ordinance, Cap. 115), the other of Making a False Representation to an Immigration Assistant (contrary to S. 42(1)(a) of the Immigration Ordinance Cap. 115). The Appellant produced a passport on which none of the personal particulars was correct. The only genuine item that related to this Appellant was her photograph. Investigation showed that she had entered with the passport and overstayed for a period of one year and 5 months. The Appellant pleaded guilty. The Magistrate was apprised of the facts which the Appellant admitted. Various matters were urged on the Magistrate in mitigation, in particular, that the Appellant's family members, her mother and her son, were ill. The Magistrate adjourned the case so that enquiries could be made in China as to these claims. Despite a three week adjournment, none of the matters was substantiated when the matter came before the court again. The Magistrate proceeded to sentence, correctly, on the basis that this type of case is both common and serious. He referred to the cases of HKSAR v. NG Lai-kin HCMA 1002 of 1998 and HKSAR v. CHU Man HCMA 1012 of 1998 and HKSAR v. YAU Kwong-yuen HCMA 268 of 1998. The proper starting point for possession of a forged travel document in the case of R. v. YU Wing-wut CACC 346 of 1984 was set by the Court of Appeal at 18 months. The Magistrate

took particular note of the decisions of Stock J, as he then was, in HKSAR v. NG Lai-kin and HKSAR v. CHU Man and took a 12 month starting point on the pleas of guilty. The facts of those cases were not really comparable and concerned the distinction that has developed (perhaps illogically) between what are referred to as transit and non-transit cases. This case could not properly be called a transit case, even if one accepts the distinction as a correct one to be made. This was an extremely generous starting point to take, in view of the guideline. The Appellant did not have a clear record. The only mitigating factor apart from her pleas before the Magistrate, was her claim, which was not substantiated, about her family members ill-health. Nevertheless, despite the absence of any documentary or other evidence, the Magistrate gave the Appellant the mitigatory benefit of her claims and reduced the sentences by a further 4 months on each charge. In my view, the Magistrate, for the first charge should have taken an 18 months starting point, reduced it by 6 months for the one-third discount for a plea of guilty and then considered what further discount, if any, should be given for other mitigating factors. I cannot say his sentence of 8 months imprisonment is in any way excessive, as the Appellant contended, and the appeal is dismissed. Because this is an entirely unmeritorious appeal, I order that the sentence on each charge be increased by 1 month to run concurrently, making a total sentence of 9 months. (C-M Beeson) Judge of the Court of First Instance Miss Polly Wan, SGC, for DPP Lam Fung, Appellant in person - PAGE - & 6" HCPI No Alice LH Yu MA.dot Microsoft Word 8.0 HCPI No Title _PID_GUID Microsoft Word Document MSWordDoc Word.Document.8

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