

HONG KONG / JUDGMENT

HKSAR v. LAM KAM WING

COURT

Court of First Instance

DECIDED

29 January 2003

CASE / FILE NUMBER

HCMA978/2002

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bjbj HCMA978/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.978 OF 2002 (ON APPEAL FROM ESCC 2197 OF 2002)

BETWEEN HKSAR Respondent and LAM KAM WING Appellant

Before : Hon Nguyen J in Court Date of Hearing : 29 January 2003 Date of Judgment : 29 January 2003

J U D G M E N T

AUTONUMOUT The appellant was sentenced by Mr David Dufton, sitting at Eastern Magistracy, to be detained in a rehabilitation center, after the appellant pleaded guilty to the offence of assault occasioning actual bodily harm. AUTONUMOUT The basis of the sentence was that the learned magistrate quite properly took the view that this was unlike an ordinary assault case and took the view that this was a serious case because it had some sort of triad background to it. The other reason was that this was an attack upon a schoolboy by a group of people. AUTONUMOUT Spicer for the appellant on appeal this morning has quite properly abandoned the argument that there should have been a Newton Enquiry AUTONUMOUT The facts of the case are quite simply that the victim was asked by the first two defendants to go to a park in Wanchai. Upon arrival at the park, the victim saw the appellant, the 4th defendant and some other males. One of the males asked the victim to join the Wo Hop To Triad Society. The victim declined. The males present including the 4th defendant then punched the victim on his face and kicked him. Later, the appellant joined in and assaulted the victim by punching and kicking him. AUTONUMOUT Some argument was raised this morning about whether it had been shown by the prosecution that the appellant knew or must have known about the triad background to this assault. I am satisfied that

it would be unrealistic to think that the appellant was unaware of what was happening before he joined in the assault on the victim. In my view, therefore, the sentence passed by the learned magistrate was entirely proper and was justified on the facts of the case. AUTONUMOUT What I have noticed is the fact that the appellant has now left the school where he was attending when he committed the present offence. I am told also that he has now stopped all association with the former 4th defendant who was also sentenced to be detained in the rehabilitation center.

AUTONUMOUT The appellant was admitted to bail pending appeal in October

2002. Since then, he has been working for a shop called the Nutri Store situated at Tai Koo Plaza. This store sells, I am informed, health products. The appellant works from 2 p.m. to 11 p.m. everyday and earns \$6,500 a month. In addition, he is a student in an institution called the Australian Training which provides training for people who want to specialize in and becoming physical training instructors. The appellant is now living together with his parents in a Housing Society flat in Lai Tak Estate. AUTONUMOUT am allowing the appeal and quashing the rehabilitation centre order because I am satisfied that to enable the appellant to carry on with his present employment would be in his best interest. He was aged 18 at the time of the commission of the offence. He had a clear record. This episode, I am sure, has been a good lesson for him. He is the only child of his parents. His parents appear to be very supportive of what he is doing and they are both present in court this morning. I have no doubt that they will supervise his activities more carefully in the future to ensure that he does not stray from the straight and narrow. AUTONUMOUT The appellant has agreed to be placed on probation. I therefore place the appellant on probation for 18 months with the following conditions :

- (1) He is to live and work at places to be approved by the Probation Officer.
- (2) He is to maintain regular contact with his Probation Officer.
- (3) He is to report to the Probation Officer if and when instructed to do so. So, the appeal is allowed to that extent. (Peter Nguyen) Judge of the Court of First Instance, High Court Ms Jasmine Ching, GC of the Department of Justice, for HKSAR Mr Rupert Spicer, assigned by DLA, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" CACV Jeannie MY MokSo ABC.dot setup Microsoft Word 9.0 Judiciary CACV Title Microsoft Word Document MSWordDoc Word.Document.8

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