

HONG KONG / JUDGMENT

HKSAR v. LAW SUK YEE

COURT

Court of First Instance

DECIDED

3 January 2007

CASE / FILE NUMBER

HCMA969/2006

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bjbj HCMA968/2006 and HCMA969/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NOS.968 AND 969 OF 2006 (ON APPEAL FROM TWCC 980 AND 1982 OF 2006)

BETWEEN HKSAR Respondent and LAW SUK YEE (

REASONS FOR JUDGMENT

AUTONUMOUT The appellant was convicted, after trial, of two charges of theft in case TWCC980/2006 and, on her own plea, of another one of the same in case TWCC1982/2006. On 11 September 2006, she was sentenced to be detained in Siu Lam Psychiatric Centre for three months. She now appeals against that sentence. AUTONUMOUT The facts of the two cases involved are not important, although it must be said that the properties stolen were not inexpensive a wallet and two key holders worth \$3,910 in the first case, and a key bag worth \$1,750 in the second. The latter case also took place while the appellant was on bail. AUTONUMOUT The following is what the magistrate said

1. The defendant appeared before me in the Tsuen Wan Magistracy in TWCC980/2006 on 27th June 2006 to face three shoplifting charges in the Departure Hall of the Hong Kong International Airport. The defendant pleaded not guilty to these charges and was found guilty after trial. She gave evidence at the trial. After conviction the defendant agreed that she had one previous similar criminal record.
2. In mitigation, the court was told that the Defendant had been raped a number of years earlier and she had had to have an abortion. As a result she had developed a recurring depressive mood. It was also said that the defendant was working at the present time as a clerk and she would lose her job if sent to prison. In addition, she could not look after her 70-year-old mother.

3. I granted the defendant bail whilst I called for a probation report, one psychiatric report and one psychologists report upon the defendant for sentencing. At the time of the remand the defendant was warned that my sentencing options remained open and I was considering imprisonment as a possible sentence.
4. On 11th September 2006, the defendant appeared before me again in the Tsuen Wan Magistracy for sentence on TWCC980/2006. At this hearing the court was asked to also deal with another case number TWCC1982/2006 involving the defendant. I noted that in TWCC 1982/2000 the defendant had appeared in Court 1 of the Tsuen Wan Magistracy on 4 September 2006 and had pleaded guilty to one charge of shoplifting at the Hong Kong International Airport. The magistrate in Court 1 had then remanded the defendant in custody and called for two psychiatric reports upon the defendant. I therefore confirmed the defendant's guilty plea and confirmed the facts admitted in TWCC 1982/2006, and then confirmed the defendant's conviction and proceeded to sentencing in this case.
5. All reports were read and explained to the defendant and she confirmed that the same were correct except that she disagreed with the psychologists report that she was not motivated to seek treatment. Letters from the family and the defendant's husband were handed to the court and these basically pleaded that she not be sent to a psychiatric hospital or prison. The elder sister also undertook to supervise the defendant in her future treatment, as did the husband who had now returned to her. It was also said that the defendant had taken up voluntary work and wanted to continue her studies. The defendant promised that if she were to be given a last chance she would not commit a further offence.
6. I noted from the probation report that the probation officer found that the defendant had unresolved emotions about her abortion and she had a rigid idea of becoming an accountant, which was causing her stress. I also noted from the psychiatric report prepared by Dr Tung Lap Yan on 16th May 2006 that the defendant had a history of admissions to hospitals for psychiatric treatment as the defendant had been diagnosed with recurrent depressive disorder with psychotic symptoms. Dr Tung also reported that the defendant had stopped taking medications around 10th April 2006 because she had had to attend examinations and she thereafter heard voices in the form of male children calling her to take some clothes away from a shop. In addition Dr Tung confirmed that the defendant had also been admitted to the Queen Mary Hospital from 22nd April 2006 to 3rd May 2006 with a diagnosis of severe depressive episode with psychotic symptoms. I also particularly noted that Dr Tung last saw the defendant on 17th May 2006 and he noted at that time that the defendant appeared anxious and worried but her speech was coherent and relevant, and her mood was stable. She had already resumed her medications and the defendant reported that they were keeping her well and stable.
7. However, I also noted that Dr Yuen Cheung Hang, Henry examined the defendant on 24th and 31st August 2006 and he concluded that the defendant was suffering from schizophrenia and she had delusions and auditory hallucinations. Her mood was unstable and she was quite often depressed because the psychotic symptoms made her distressful. He maintained

that in view of the defendant's unstable mental state and the risk of suicide, further inpatient treatment was indicated, and he recommended a 3-month hospital order. He also confirmed provision was made for her admission. This report was supported by the psychiatric report prepared by Dr Liu Ching Yung, Amy who also examined the defendant during her remand in custody. Dr Lui confirmed the diagnosis and confirmed the recommendation of a hospital order. She also reported that the sister had seen that the defendant had been rather moody in the last two months, she would suddenly cry out of the blue, she seemed preoccupied and slept a lot after taking the drugs.

8. I therefore believed, despite the plea by the defendant and her family for alternative sentencing, that an Hospital Order was appropriate for the defendant's recovery from her mental illness, as I believed she had again had a relapse. I also believed that without further inpatient treatment she would through her relapse and hallucinations, and the strain of the examinations, once again start shoplifting.
9. I therefore made an Hospital Order for 3 months on all charges involved and dis-applied the Proviso to allow the defendant to be released without the consent of chief executive. AUTONUMOUT Before me, the appellant has made it clear that she would abandon all written grounds previously filed. She would still proceed with the appeal in the hope of an immediate release, however, because first, the company she has worked for for seven years would withdraw her position if she remains absent for three months and, second, her legally separated husband is now back in Hong Kong to look after her. Other details are advanced such as the flexibility of this job thus enabling her to care for her sick mother and her husband's good office hours which facilitates the supervision of her medication. AUTONUMOUT None of these are, however, good enough reasons to shorten the order in question. It is there to enable adequate treatment for the appellant as well as to protect society from her further possible transgression. It has only 19 days left to come to its completion on 9 December 2006. AUTONUMOUT The appeal is dismissed. (D. Pang) Deputy High Court Judge Ms Wan Suk Fong, Polly, SGC of Department of Justice, for HKSAR Appellant in person, present 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 t"("# t"("# &`#\$ "@AB @W 5 =jG4 ddB 0 @W 5 L{0< T \] & 6" ABC.dot setup Microsoft Word 9.0 QuT8 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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