

HONG KONG / JUDGMENT

HKSAR v. LEE KAR WAH

COURT

Court of First Instance

DECIDED

12 December 2007

CASE / FILE NUMBER

HCMA1073/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj ellant

Before: Deputy High Court Judge Geiser in Court Date of Hearing: 12 December 2007 Date of Judgment: 12 December 2007

J U D G M E N T

On 23 October 2007, the Appellant appeared before Mr Stephen Smout, a magistrate sitting at Tuen Mun Magistracy, and pleaded guilty to two charges of acting as a member of a triad society contrary to section 20(2) of the Societies Ordinance, Cap. 151, Laws of Hong Kong. He was sentenced to 6 months imprisonment on each charge, to be served concurrently with each other. The Appellant now appeals against sentence. Counsel on behalf of the Appellant relies on two perfected grounds of appeal against sentence: firstly, that the learned magistrate had erred in failing to consider sufficiently that there was a significant disparity in sentence between defendants of similar individual circumstances convicted of similar offences on facts of a similar nature; and secondly, that the learned magistrate had erred in failing to consider sufficiently sentences alternative to an immediate custodial term are sufficient to mark the gravity of the offence and/or punish the Appellant. The facts relative to each of the charges to which the Appellant pleaded guilty are quite straightforward and indicate that as far as the 1st charge is concerned, PW1, who was an undercover police officer, was deployed to infiltrate a faction of the 14K Triad Society active in the Yuen Long area. On 2 October 2004, he, that is, PW1, was recruited to become a member of the 14K Triad Society. Two weeks later on 16 October 2004, PW1 was approached by the Appellant and four others to blow the whistle. The Appellant led PW1 and the other four males to another bar, where he claimed someone was causing trouble. At that bar, the Appellant scolded two unknown males and asked if they were causing trouble to which they replied in the negative. This was the 1st charge. The 2nd charge related to an incident at approximately midnight on 22 November 2004. On that occasion, PW1 received a telephone call

from his Ah Kung , that is, the protector s protector, to proceed to another bar and blow the whistle. PW1 and three other males joined up outside the entrance of the bar where PW1 was asked to wait. Later, PW1 was told that the matter had been settled. He went into the bar and met the Appellant, who praised him as being a good brother and said that he was happy with his performance. The question of disparity of sentence, which is the first ground of the Appellant s perfected grounds of appeal, was raised and rejected by the learned magistrate on a review of sentence instituted by the Appellant pursuant to section 104 of the Magistrates Ordinance, Cap. 227, praying in aid a defendant in TMCC 1549 of 2006, who was sentenced to 4 months imprisonment for a similar offence on conviction after trial. I have no details as to the reasons why such a lenient sentence was imposed on this particular defendant, but a review of the authorities, two of which the learned magistrate referred to in his reasons for sentence, that is, HKSAR v Wong Sing Chi, CACC 245 of 1999, and HKSAR v Wong Fuk Tak, CACC 249 of 1999, establishes that the correct sentencing range for an offence of this nature is between 9 to 18 months imprisonment. In addition to this, Liu J in HKSAR v Yeung Chi Keung & Another, CACC 96 of 1998, in upholding a starting point of 15 months imprisonment adopted by Deputy Judge Wright, as he then was, said this: Whether or not violence would ensue is, in most cases, unpredictable. Blowing the whistle for the congregation of a triad group to stand against rival gangs is itself a serious menace to tranquility. And later on in the same passage: Acting as a triad member in the course of bearing the teeth of the underworld is no small crime. Obviously, each case will depend very much on its own particular circumstances pertaining to the offence and the defendant himself, but the fact that one defendant in one case is fortunate enough to receive the extremely lenient sentence of 4 months imprisonment after trial does not mean that the learned magistrate s sentence of 6 months imprisonment in the present case was manifestly excessive or wrong in principle. Indeed, in my judgment, the learned magistrate in adopting 9 months imprisonment on each charge, properly reducing the sentence to 6 months to take account of the Appellant s plea of guilty and then ordering the two sentences to run concurrently with each other, was already taking a lenient course. Ground 1 fails. There is no merit to Ground 2 and it is unworthy of further comment, save to say this, that it is apparent from the learned magistrate s statement of findings that he was specifically asked to consider a suspended sentence of imprisonment or a community service order. He quite rightly refused to consider these as sentencing options, taking the view that these were serious offences which warranted an immediate custodial sentence. A custodial sentence was inevitable. This appeal against sentence is dismissed. Deputy High Court Judge Geiser Representations: Mr David Leung, Senior Government Counsel of the Department of Justice, for the Respondent Mr Sky Cheng, instructed by Damien Shea & Co., for the Appellant PAGE - PAGE - CRT17/12.12.2007/GTT HCMA1073/2007/ 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 & `#\$ bZ < =RM/L\$t\ [g\k [g\k =RM/ Normal.dot setup Microsoft Word 9.0 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=59576

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-lee-kar-wah-2007>

Prepared on 26 October 2026 · Esheria