

HONG KONG / JUDGMENT

HKSAR v. LI GUOQIANG

COURT

Court of Appeal

DECIDED

23 March 2007

CASE / FILE NUMBER

CACC198/2005

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Before: Hon Stuart-Moore VP, Stock JA and Beeson J Date of Hearing: 23 March 2007 Date of Judgment: 23 March 2007 J U D G M E N T Stuart-Moore, VP (giving the judgment of the Court): The appellant (D2 at trial) was last before this court on 1 November 2006 in CACC 198/2005 when he sought to have the abandonment of his application for leave to appeal against conviction on two charges of conspiracy to defraud treated as a nullity. The application was one which was without hope and it was duly dismissed. However, as Ms Louisa Lai on the respondent's behalf had pointed out to the appellant's legal representatives as early as 3 August 2006, the only sensible course for the appellant to have adopted in order to remedy the situation in which he found himself was to petition the Chief Executive under section 83P of the Criminal Procedure Ordinance, Cap. 221. This was because another defendant (D1) in the same proceedings had, on 4 May 2006, succeeded in his appeal against conviction (see: HKSAR v Ngai Wan-cheung [2006] 3 HKC 98) and the appellant was in more or less an identical position to D1 with every chance of success on appeal. When we gave judgment on 1 November 2006 in CACC 198/2005 we said, amongst other things: the applicant and D1 each faced two charges of conspiracy to defraud which alleged what amounted to street scams by means of which innocent passers-by were lured into parting with their money on the promise of quick and substantial profits held out to them if they contributed towards the purchase of goods which it was said would be sold quickly.

11. Following conviction after trial before Judge Chua in the District Court, D1 and the applicant each received sentences of 3 years imprisonment on the 1st charge and, on the 2nd charge, 3 years with 1 year and 4 months imprisonment of that term to run consecutively, making 4 years and 4 months imprisonment in all.
12. The success of D1's appeal in practical terms has been that on the 1st charge, after his case went back for retrial on that charge alone, he was able to plead guilty. He then received a sentence of 2 years imprisonment.

13. The same ground of appeal which was successfully raised on D1 s behalf would, it seems, be equally likely to succeed in the applicant s case. In these circumstances, the applicant may feel that he would be well advised to adopt the remedy of petitioning the Chief Executive which we, as well as Ms Louisa Lai, have drawn to his attention. The matter has now been referred to us, pursuant to the powers conferred on the Chief Executive under section 83P of the Criminal Procedure Ordinance. All that we need to say in the circumstances is that this appeal is allowed. Indeed, Mr Zervos SC on the respondent s behalf did not seek to argue to the contrary. The two convictions for conspiracy to defraud are quashed and the appellant s sentence, which in total amounted to 4 years and 4 months imprisonment, is set aside. We shall not order a retrial on the 1st charge, as we did in the case of D1, as it has been pointed out by Mr Zervos that the appellant has already served 2 years and 7 months of his sentence. (M. Stuart-Moore) Vice-President (Frank Stock) Justice of Appeal (C-M Beeson) Judge of the Court of First Instance Mr Kevin P Zervos, SC, SADPP and Ms Ada Chan, GC, of the Department of Justice, for the Respondent. Mr Chong Tin Chun, instructed by Messrs Peter K H Wong & Co., assigned by Director of Legal Aid, for the Appellant. PAGE - A B C D E 1udk 1udk i\$&`G Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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