

HONG KONG / JUDGMENT

HKSAR v. LIAO YUDONG

COURT

Court of First Instance

DECIDED

22 May 2007

CASE / FILE NUMBER

HCMA1234/2006

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bjbj HCMA1234/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO.1234 OF 2006 (ON APPEAL FROM STCC 11602 OF 2006)

BETWEEN HKSAR Respondent and LIAO YUDONG (peal against the sentences totalling 18 months imprisonment imposed on the appellant by Mr Dufton on 28 November 2006 following his conviction on his own plea of two counts of Using a false travel document for the purposes of Part II of the Immigration Ordinance, Cap.115 (the Ordinance), contrary to section 42(2)(b) of the Ordinance (Charges 1 and 3), and two counts of Making a false representation to an Immigration Assistant lawfully acting under or in execution of Part II of the Ordinance, contrary to section 42(1)(a) of the Ordinance (Charges 2 and 4). AUTONUMOUT The charges related to two occasions the appellant had entered Hong Kong using a false Chinese travel permit and at the same time misrepresented his identity to an Immigration Assistant. The first occasion that he entered Hong Kong in this way was on 22 June 2005, and is the subject to Charge

1. The second occasion was on 24 November 2006 and is the subject of Charges 3 and 4. The permit used on each occasion bore the appellant s photograph but the name and date of birth of another person. AUTONUMOUT The magistrate adopted a starting point of 18 months imprisonment on each charge, which he discounted to 12 months to reflect the appellant s pleas of guilty. He ordered the sentences on Counts 1 and 2 to run concurrently. He ordered the sentences on Counts 3 and 4 to run concurrently with each other but six months of which to run consecutively to the sentences on Charges 1 and
2. The totality of the sentences was therefore 18 months. AUTONUMOUT The appellant was not a first offender so far as the courts of Hong Kong are concerned. Prior to the first of the two unlawful entries with which this appeal is concerned, the appellant had twice been before the courts here. AUTONUMOUT On 29 June 2000 he had been convicted of three offences, one of which was Taking a conveyance without authority for which he was sentenced to three months imprisonment suspended for three years. AUTONUMOUT On 18 July 2003 he was before the courts again for the offence of Possessing a false instrument and for Breach

of his suspended sentence. The court passed an immediate term of six months imprisonment for the offence of possessing a false instrument and activated the suspended sentence, ordering one month of the three months to run consecutively to the sentence on the charge of possessing a false instrument. AUTONUMOUT Wong for the appellant has not sought to criticise the sentences imposed by the magistrate based on the information before him at the time. The appeal today based upon information about his alleged circumstances which were not before the magistrate. AUTONUMOUT In his perfected grounds of appeal the appellant argued that the court did not have the benefit of hearing all the mitigation about his personal circumstances and therefore imposed a longer sentence than it should have done. He asked for leave to adduce additional evidence. AUTONUMOUT The additional evidence which I allowed to be adduced were a letter from the appellant's alleged employers Kwangtung Province Hsing Ning City Post Office saying that he was an industrious and law abiding employee, that he had entered a contract from 1 September 2006 to 1 September 2007, and that he had been permitted to leave his employment in the Mainland to visit his senile parents on no paid leave. If he wanted to continue his no pay leave he was required to renew the contract in person before 1 September 2007. AUTONUMOUT The second document was what purports to be an ultrasound report from the Hsing Ning City People's Number 2 Hospital reporting that Liao Seng Huang, aged 59, whom I was told is the appellant's father, had a tumour of 15 15mm over the left lobe of his liver. AUTONUMOUT I am satisfied that had those documents been before the court, they would not have affected the sentences the magistrate imposed. AUTONUMOUT I view the letter allegedly from the post office in Hsing Ning City with considerable suspicion. In the Magistrates Court no mention was made of the appellant's employment with the post office in Hsing Ning City in mitigation. On the contrary the court was told that he lived in Shenzhen and that in the PRC he was the owner of a grocery store and a boutique shop earning about \$20,000 a month. No explanation has been offered as to why if he was genuinely an employee of the post office in another city the court was not told about it. AUTONUMOUT The ultrasound report gives no indication of whether or not the father's alleged tumour is benign or malignant. It does not appear from the document that the tumour is in the liver but rather over the liver as it states that no irregularity was found in the liver. What is apparent from this document is that the father is aged 59 and well enough to travel to the Mainland to undergo this ultrasound. AUTONUMOUT In the Magistrates Court the magistrate was told that the appellant's sole reason for committing these offences was in order to visit his aged parents who were both aged above

60. Mr Wong cannot explain to me why his parents were unable to visit the appellant in the Mainland rather than the appellant having to commit the offences in order to come to Hong Kong to visit them. AUTONUMOUT This is nothing in these documents which lead me to believe that the sentences imposed by the magistrate were in any way improper. I dismiss the appeal. (P.K.M. Longley) Deputy High Court Judge Miss Agnes Chan, SGC of DPP, for the Respondent. Mr Kevin C.W. Wong, instructed by Messrs Reimer 1udk 1udk U V & `#\$ & 6" ABC.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc

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