

HONG KONG / JUDGMENT

HKSAR v. LIN SHING CHUN, MICHAEL

COURT

Court of First Instance

DECIDED

16 May 2007

CASE / FILE NUMBER

HCMA308/2007

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bjbj HCMA308/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 308 OF 2007 (ON APPEAL FROM KTCC 931 OF 2007)

BETWEEN HKSAR Respondent and LIN SHING CHUN, MICHAEL (t appeals against the sentence of six months imprisonment imposed upon him on 9 March 2007 by Mr Jenkins at Kwun Tong Magistracy following his plea of guilty to an offence of possession of a dangerous drug. His ground of appeal is that the sentence was too severe. He has however chosen not to say anything further in support of this allegation on the hearing of this appeal today. AUTONUMOUT The appellant was stopped by the police at around 3:52 a.m. on 29 December 2006 in Portland Street. In his trouser pocket the police found 20 packets which contained a total of 5.67 grammes of a powder containing 4.87 grammes of ketamine. The case first came before Mr Jenkins on 23 February 2007 when the appellant pleaded guilty and admitted the facts. The magistrate remanded the appellant in custody for two weeks until 9 March 2007 for the preparation of a report as to his suitability for Drug Addiction Treatment Centre. AUTONUMOUT On 5 March 2007, that is four days prior to 9 March 2007 when he was due to come before Mr Jenkins again, the appellant was sentenced to six months imprisonment at Tuen Mun Magistracy for an offence of theft. When this matter came before Mr Jenkins again on 9 March, he had received a report which recommended the appellant as being suitable for treatment in a Drug Addiction Treatment Centre. AUTONUMOUT The magistrate initially made an order that the appellant be detained in a Drug Addiction Treatment Centre. He had however overlooked the fact that the appellant was then currently serving the term of six months imprisonment in respect of the theft offence. Later in the morning of 9 March the prosecution drew to the magistrate s attention certain authorities, in particular the case of AG v. To Ka Shing [1987] HKLR 69, which indicated that a treatment order should not be ordered to commence at the conclusion of a term of imprisonment. Nor can a treatment order be served concurrently with a prison sentence. AUTONUMOUT The magistrate therefore reviewed his sentence. He adopted a starting point of six month s imprisonment, which he discounted by three months to reflect the appellant s plea of guilty. He ordered that sentence to run consecutively to the six months sentence the appellant was then serving after considering

the totality that that would involve. AUTONUMOUT am satisfied that the magistrate s reasoning cannot be faulted. The nine months starting point was in no way excessive bearing in mind the number of packets involved and the latent risk that the appellant might have been tempted to dispose of some of them to others. It was appropriate to order the sentence imposed to run consecutively to the sentence the appellant was then serving. The theft offence had been committed on 9 February 2007 while the appellant was on bail for the current offence. There are no grounds for upsetting the magistrate s sentence which was wholly appropriate. AUTONUMOUT dismiss the appeal. (P.K.M. Longley) Deputy High Court Judge Mr Lee Kan Yung, Ro 1udk 1udk L M N O P Q R S T U V &`#\$ 4eg* oe/+ UE~f& 4eg* UE~f oe/+ & 6" ABC.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 28 October 2026 · Esheria