

HONG KONG / JUDGMENT

HKSAR v. MA SAI YUK

COURT

Court of First Instance

DECIDED

18 May 2007

CASE / FILE NUMBER

HCMA361/2007

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bjbj HCMA 361/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 361 OF 2007 (ON APPEAL FROM ESCC 653 /2007)

BETWEEN HKSAR Respondent and MA SAI YUK Appellant

Before: Deputy High Court Judge E Toh in Court Date of Hearing: 18 May 2007 Date of Judgment: 18 May 2007

J U D G M E N T

The Appellant in this case pleaded guilty to one charge of obstructing a police officer in the due execution of his duty and one charge of assaulting a police officer. She was sentenced to 2 months imprisonment on Charge 1 and 6 months imprisonment on Charge 2, both sentences to run concurrently, thus making a total sentence of 6 months imprisonment. The Appellant appeals against that sentence on the ground that it is too severe. The facts show that the Appellant had been arrested for an offence of assault occasioning actual bodily harm and prior to placing her in a cell, she was taken to a room to be searched. She refused to follow the police officer's instruction and the police officer called a sergeant into the room. At that time, the Appellant then slapped the woman sergeant on the face whose spectacles fell onto the floor. Subsequently both officers subdued the Appellant. The nose of the woman sergeant was bleeding. When they were taken to the hospital, the woman sergeant was found to have redness and bruising on her left hand, and an abrasion on her nose. The woman police officer was found to have a tender left arm. When the Appellant was subsequently searched, she was found to have a lighter and a pack of cigarettes in her underwear. The learned Magistrate considered the facts of the case, and also the mitigation for the Appellant. She is 52 years old. She is a cleaning worker and that she was

remorseful. In his reasons for sentence, the learned Magistrate pointed out that this offence was committed by the Appellant basically because she did not want a cigarette and lighter to be taken away. Police work is sometimes dangerous and police officers should not be subjected to being assaulted by people who had been arrested. The learned Magistrate considered sentences previously imposed for similar offences where sentences of 3 to 9 months were upheld. The learned Magistrate also considered that the Appellant had a really bad record. She had over 49 previous convictions over the years and had therefore not kept out of double with the law and never learned anything from the sentence she had previously been given. So, after the considering all the previous cases dealing with similar offences and the mitigation that had been advanced, the learned Magistrate considered that the appropriate sentences should be 2 months and 6 months on Charges 1 and 2. The Appellant appeals against the sentences on the ground that they are too severe and she had pleaded guilty. She has a regular job and a regular life and also she is remorseful and so she should not be given such a severe sentence. On appeal, I have to decide whether the sentences were manifestly excessive. I do not consider them to be manifestly excessive. Our police officers have to be protected when they are performing their duty and they cannot be subjected to ill treatment from suspects and so the sentences are not severe at all and so the appeal is dismissed. (E Toh) Deputy High Court Judge Mr Alex Lee, Senior Assistant Director of Public Prosecutions, for the Respondent Appellant in person PAGE - 1udk 1udk 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 i\$&`G ,wC= ,wC= hcma.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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