

HONG KONG / JUDGMENT

HKSAR v. MAC QUANG BINK

COURT

Court of First Instance

DECIDED

15 May 2007

CASE / FILE NUMBER

HCMA234/2007

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bjbj HCMA234/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 234 OF 2007 (ON APPEAL FROM KCCC7686 OF 2006)

BETWEEN HKSAR Respondent and MAC QUANG BINK (IQs^) - R E A S O N S F O R J U D G M E N T

AUTONUMOUT The appellant was convicted on his own plea to one charge of theft , contrary to section 9 of the Theft Ordinance, Cap.

210. He was sentenced to 14 months imprisonment. He now appeals against that sentence.

AUTONUMOUT As disclosed by the Brief Facts, the victim in this case discovered that she had lost her mobile phone at 8:30 p.m. while in a restaurant in Chung Wui Street, Mongkok. Some time earlier, the police had stopped the appellant and found the phone on him. Under caution, he claimed to have found the phone in Tai Kok Tsui at 8 p.m. and was intending to sell it in Apliu Street where he was arrested. AUTONUMOUT The appellant is aged

42. He has 19 previous convictions 16 of which were similar. The last one dated 8 February 2006, also for theft, brought him another term of 14 months imprisonment. AUTONUMOUT Though advanced as one in mitigation, the magistrate refused to accept this case as a theft by finding. Given the proximity of time and location of where the victim found her phone missing, the magistrate indicated that she could an inference to the contrary.

AUTONUMOUT It is against this conclusion that the present appeal is directed.

AUTONUMOUT Having considered the matter, I am persuaded that there are other possible interpretations and that the appellant is entitled to the benefit of the doubt that he did come across the phone by finding. AUTONUMOUT The sentence of 14 months is set aside. It is substituted by one of 6 months. (D. Pang) Deputy High Court Judge Ms Ho May Yu Lily, SGC of Department of Justice, for HKSAR Mr Suen Kam Hee, instructed by the Director of Legal Aid, for the Appellant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I

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