

HONG KONG / JUDGMENT

HKSAR v. MANG WAI

COURT

Court of Appeal

DECIDED

23 May 2007

CASE / FILE NUMBER

CACC4/2007

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Before : Hon Stuart-Moore VP and McMahon J Date of Hearing : 23 May 2007 Date of Judgment 23 May 2007

J U D G M E N T

McMahon J (Giving the judgment of the Court) AUTONUMOUT The unrepresented applicant was committed to the High Court for sentence on 10 November 2006 for an offence of attempted robbery, contrary to sections 10(1) and (2) of the Theft Ordinance, Cap. 210 and section 159G of the Crimes Ordinance, Cap.

200. He was sentenced on 27 December 2006 by Beeson J to eight years imprisonment and now seeks leave to appeal that sentence on the ground that it is manifestly excessive.

AUTONUMOUT The facts of the offence were that the applicant had entered the Nathan Road branch of the Hang Seng Bank in Mongkok carrying a spring binder which concealed a cylindrical device. He carried also a paper bag. He approached a female customer services officer (PW1) and opened the binder showing her the cylindrical object inside. He said it was a bomb and initially demanded she give him \$2 million. The applicant also told PW1 that he had a separate bomb in the paper bag he was carrying. AUTONUMOUT PW1 took the applicant to a teller (PW2) in a different section of the bank where she said there was sufficient money. The applicant made her carry the binder containing the cylindrical object. He told her he had a remote control device. AUTONUMOUT A note which the applicant had forced PW1 to write was handed to PW2 demanding \$500,000 and informing PW2 that there was a bomb. PW2 activated an anti robbery alarm and kept the applicant waiting by claiming there were insufficient bank notes in her drawer. AUTONUMOUT While the applicant was still waiting at PW2 s counter, police arrived at the scene and arrested him. The object inside the spring file and the items in the paper bag were found not to be

explosive in nature. Subsequently the applicant admitted he had attempted to rob the bank to pay off a large soccer gambling debt. AUTONUMOUT The judge in passing sentence said this . I start from the position that bank robbery is a very serious offence and that the range of sentence for armed robberies of a bank are in the range of 12 to 15 years and higher if weapons are actually used. I do not make a distinction for the purposes of sentencing between an attempt and the full offence. The defendant prepared a fake bomb and, on two separate occasions in the bank, referred to the fact that he had a bomb, each time demanding large sums of money. Parts of the fake bomb that were visible to the Customer Services Officer clearly succeeded in the attempt to frighten the Customer Services Officer. The items he carried and the comments made to the staff indicate that his intention was to create as frightening a situation as possible in order to accomplish his objective of obtaining \$2 million to pay his soccer gambling debts. AUTONUMOUT In R. v. Yu Tai Wing [1995] 2 HKCLR 119, at page 122, Macdougall VP said For policy reasons we take the view that in the case of bank robberies, jewellery shop and goldsmith shop robberies, security van or payroll robberies and such the like, no distinction should be made between cases where genuine firearms are used but not discharged and those in which imitation firearms are used. Obviously, the risk that a loaded genuine firearm carried by a robber might be discharged in the course of such robbery does not exist where the robber is armed with an imitation firearm. But the chance that the police or security guards who are called to or happen upon the scene might open fire in the course of such robberies cannot be overlooked. The risk of innocent by-standers being killed or injured is always present in circumstances where decisions have to be made in split seconds. The same logic applies equally to the use of fake bombs and suchlike devices and, in our view, the judge was right when she said . To that extent, the fact that the bomb was a fake does not make much difference in terms of the anguish caused to the staff and the general fear engendered by this offence. AUTONUMOUT Whilst possibly different from imitation firearms in the response occasioned, the display of a hoax bomb or a claim to possess one, may nevertheless very well justify an action from armed security personnel or police officers which is necessarily dangerous to the public because of the fear of the widespread injury or death such a device could cause. AUTONUMOUT In our judgment it cannot be said that the starting point of sentence of 12 years imprisonment was excessive. There is a substantial line of authority that the armed robbery of banks, whether with real or imitation weapons, attracts starting points of sentence of between 12 and 15 years imprisonment : see R. v. Lo Kwok Hung (unreported), CACC472/1991, R.v. Yu Wai Lam (unreported), CACC 56/1991 and HKSAR v. Wong Wai Keung [2003] 3 HKLRD 39, at 41 and HKSAR v. Lau Oi Ming (unreported), CACC270/2002. AUTONUMOUT The applicant has referred us to a number of cases he has gleaned from published statistics and newspaper articles which relate to bank robberies, sometimes involving hoax bombs, where lesser sentences than that which he received were imposed. We obtain no assistance from those cases, each of which was dealt with on its own facts. AUTONUMOUT The starting point of sentence taken by the judge in the present case was appropriate and, after a full discount was allowed for the applicant s plea of guilty, the sentence of eight years imprisonment cannot be criticised. AUTONUMOUT The application

is refused. (M. Stuart-Moore) Vice-President (M.A. McMahon) Judge of the Court of First Instance Mr Graham D. Goodman, SGC of Department of Justice, for HKSAR Applicant in person, present 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 J K L M N O P Q R S T U V t"(& `#\$ "@AB i\$& `G w^Ba w^Ba EvP & 6" CACV Jeannie MY MokSo ABC.dot user Microsoft Word 9.0 Judiciary CACV Title Microsoft Word Document MSWordDoc Word.Document.8

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